BOARD MEETING NOTICE
May 16-17, 2012

Department of Consumer Affairs
Hearing Room
1747 North Market Blvd., 1st Floor
Sacramento, CA 95834

Wednesday, May 16
9:00 a.m.

FULL BOARD OPEN SESSION – Call to Order & Establishment of a Quorum

I. Introductions

II. Approval of the February 29 - March 1, 2012, Board Meeting Minutes

III. Executive Officer’s Report
   a. Budget Report
   b. Operations Report
   c. Personnel Update
   d. Sunset Review Update

IV. Continuing Education Committee Report

V. Update on the California Marriage and Family Therapy Occupational Analysis and Collaboration with the Association of Marital and Family Therapy Regulatory Boards

VI. Policy and Advocacy Committee Report
   a. Recommendation #1 - Support, Assembly Bill 40 (Yamada) if amended
   b. Recommendation #2 - Support, Assembly Bill 171 (Beall)
   c. Recommendation #3 - Support Assembly Bill 367 (Smyth) if amended
   d. Recommendation #4 - Support Assembly Bill 1588 (Atkins) if amended
   e. Recommendation #5 - Support Assembly Bill 1785 (Lowenthal, B.)
   f. Recommendation #6 - Oppose Assembly Bill 1864 (Wagner)
   g. Recommendation #7 - Support Assembly Bill 1904 (Block)
   h. Recommendation #8 - Consider Assembly Bill 1932 (Cook)
   i. Recommendation #9 - Support Assembly Bill 2570 (Hill)
   j. Recommendation #10 - Consider Senate Bill 1134 (Yee)
   k. Recommendation #11 - Consider Senate Bill 1183 (Lieu)
   l. Recommendation #12 - Support Senate Bill 1238 (Price)
   m. Legislative Update
   n. Rulemaking Update
VII. Discussion and Possible Rulemaking Action Regarding Revision of Disciplinary Guidelines

VIII. Discussion of Possible Action Regarding Complaints Against Licensees who Provide Confidential Child Custody Evaluations to the Courts

IX. Discussion of Possible Action Regarding Research Related to the 90 Day Rule and Enforcement Actions

X. Other Legislation
  a. Discussion and Possible Action Regarding Senate Bill 1172
  b. Discussion and Possible Action Regarding Assembly Bill 1976
  c. Discussion and Possible Action Regarding the Board’s Examination Restructure.

XI. Update Regarding the Implementation of SB 1441, Chapter 548, Statutes of 2008 and SB 1172, Chapter 517, Statutes of 2010

XII. Discussion Regarding the Department of Managed Health Care Autism Advisory Task Force

XIII. Discussion Regarding Establishing a Two Member Executive Committee

XIV. Election of Board Officers 2012-2013

XV. Suggestions for Future Agenda Items

XVI. Public Comment for Items Not on the Agenda

XVII. Adjournment

Thursday, May 17
8:30 a.m.

FULL BOARD OPEN SESSION - Call to Order & Establishment of a Quorum

XVIII. Introductions

XIX. Petition for Early Termination of Probation for Cassandra Kendall, ASW 21095

XX. Petition for Early Termination of Probation for John McGinnis, MFC 47040

FULL BOARD CLOSED SESSION

XXI. Pursuant to Section 11126(c)(3) of the Government Code, the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters

XXII. Pursuant to Section 11126(a) of the Government Code, the Board Will Meet in Closed Session to Evaluate the Performance of the Board’s Executive Officer
FULL BOARD OPEN SESSION

XXIII. Suggestions for Future Agenda Items

XXIV. Public Comment for Items Not on the Agenda

XXV. Adjournment

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Items will be considered in the order listed. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

THIS AGENDA AS WELL AS BOARD MEETING MINUTES CAN BE FOUND ON THE BOARD OF BEHAVIORAL SCIENCES WEBSITE AT www.bbs.ca.gov.

NOTICE: The meeting is accessible to persons with disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Christina Kitamura at (916) 574-7835 or send a written request to Board of Behavioral Sciences, 1625 N. Market Blvd., Suite S-200, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.
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BOARD MEETING MINUTES - DRAFT
February 29 – March 1, 2012

Department of Consumer Affairs
Hearing Room
2005 Evergreen St., #1150
Sacramento, CA 95815

Wednesday, February 29th

Members Present
Dr. Christine Wietlisbach, Chair, Public Member
Patricia Lock-Dawson, Vice Chair, Public Member
(Served at 1:29 p.m.)
Samara Ashley, Public Member
Dr. Harry Douglas, Public Member
Dr. Judy Johnson, LEP Member
Sarita Kohli, LMFT Member
Renee Lonner, LCSW Member
Karen Pines, LMFT Member
Christina Wong, LCSW Member

Staff Present
Kim Madsen, Executive Officer
Tracy Rhine, Assistant Executive Officer
Roxanne Helms, Legislative Analyst
Marc Mason, Administration/Exam Manager
Christina Kitamura, Administrative Analyst
Michael Santiago, Legal Counsel
Dianne Dobbs, Legal Counsel

Members Absent
None

Guest List
On file

FULL BOARD OPEN SESSION

I. Introductions

Dr. Christine Wietlisbach, Board of Behavioral Sciences’ (Board) Chair, opened the meeting at 8:27 a.m. Christina Kitamura called roll. A quorum was established.

II. Petition for Modification of Probation, Joel Fishman, LMFT 7650


Judge Frink opened the hearing. DAG Denvir presented the matter. Mr. Fishman presented his request to modify probation and information to support his request. DAG Denvir cross-examined Mr. Fishman. Board members also posed questions to Mr. Fishman.

Judge Frink closed the hearing at 9:37 a.m. The Board took a break and reconvened at 9:52 a.m.
III. Petition for Early Termination of Probation, Benton Dorman, LEP 2489

Catherine B. Frink, Administrative Law Judge (ALJ), presided over the hearing. Anahita Crawford, DAG, represented the Board. Benton Dorman represented himself.

Judge Frink opened the hearing. DAG Crawford presented the matter. Mr. Dorman presented his request to terminate his probation early and information to support his request. DAG Crawford cross-examined Mr. Dorman. Board members also posed questions to Mr. Dorman. After answering all questions, Mr. Dorman presented his closing remarks.

Judge Frink closed the hearing at 11:16 a.m. The Board entered into closed session.

FULL BOARD CLOSED SESSION

IV. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action Regarding Disciplinary Action

At the conclusion of the closed session, the Board took a break for lunch.

FULL BOARD OPEN SESSION

The Board reconvened in open session at 1:22 p.m. Ms. Kitamura called roll. A quorum was established. Board members, Board staff, and public attendees introduced themselves.

V. Approval of the November 9-10, 2011 Board Meeting Minutes

A revised draft copy of the November Board minutes was provided. No amendments were suggested.

Karen Pines moved to approve the November 9-10, 2011 Board meeting minutes as amended. Renee Lonner seconded. The Board voted unanimously (8-0) to pass the motion.

Dr. Wietlisbach took Item VII (Executive Officer’s Report) out of order and Item VI (Presentation by Board Counsel on Ethical Decision Making) was taken after Item VII.

VI. Presentation by Board Counsel on Ethical Decision Making

Dr. Wietlisbach introduced Board Counsel Michael Santiago. Mr. Santiago presented the top ten rules of the Bagley-Keene Open Meeting Act, and explained each of those rules and the Board members’ responsibilities regarding the requirements of the meeting agenda, gathering of the board or a committee (serial meetings), teleconference meetings, public comments, closed sessions, and conflicts of interests.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), asked if Board members can attend conferences sponsored by associations and speak to licensees/conference attendees. Mr. Santiago replied that there is no prohibition to attending and speaking at the conferences. He added that Board members are encouraged to attend and participate in these conferences as Board representatives.

VII. Executive Officer’s Report

a. Budget Report

Patricia Lock-Dawson joined the meeting at 1:29 p.m.
Kim Madsen reported on the Board’s budget. The 2011/2012 budget is $7,779,000. Expenditures as of December 31, 2011, total $3,386,460, which represents 17% of expenditures in personnel expenses and 9% in enforcement activities. Revenues as of December 31, 2011, are $4,396,080.33 representing 57% of the total budget. Projected expenses through the end of the fiscal year, which include the additional BreEZe costs, are estimated to be no more than $7.7 million.

The Board’s current fund condition reflects a reserve balance of 3.1 months. The General Fund loan total to date is $12.3 million.

In January, the Governor released his 2012/2013 budget. The proposed budget provides $8,153,000 in authorized spending for the Board, a slight increase from the Board’s current year spending authorization. The Governor’s budget also provides for a repayment of $2 million dollars to the Board for monies previously loaned to the General Fund.

The Governor’s budget also included reorganization of state government to make it more efficient by consolidating functions. Although it appears that the Board will not be directly impacted by the reorganization proposal, changes proposed to the Department of Consumer Affairs (DCA) and State and Consumer Services Agency could result in some indirect changes. Board staff will continue to monitor developments and will provide reports to the Board as more information is obtained.

Christina Wong noticed that the budget does not reflect an increase of staff due to the new licensure program, which will result in current staff sharing an increased workload. Ms. Madsen confirmed Ms. Wong’s statement. Ms. Madsen added that staff has discussed submitting a Budget Change Proposal (BCP) for the 2013/2014 fiscal year to add staff.

b. Operations Report

Ms. Madsen reported on the Board’s operations. For the first time since June 2010, the Board is now fully staffed. In November 2011, the Board was notified it was no longer subject to the provisions of the hiring freeze. Board staff moved quickly to fill its existing vacancies. There are two vacancies remaining in the Enforcement Unit, which are positions for additional staff.

Ms. Madsen provided an update on the Licensing and Examination Program. As of January, the licensing program is fully staffed for the first time since June 2010. Once the new staff is fully trained the Board anticipates a reduction in processing times in the coming months. The additional staff has allowed for the redirection of some of the less complex tasks associated with the evaluation of Marriage and Family Therapist (MFT) examination eligibility applications to other staff.

The fourth quarter statistics reflect a decrease in application volume for all licensing programs. As of February 19th, staff is working on applications received during the weeks noted:

- MFT intern registration - January 23, 2012
- MFT exam eligibility - September 20, 2011
- Associate Social Worker (ASW) registration - February 2, 2012
- Licensed Clinical Social Worker (LCSW) exam eligibility - January 17, 2012
- Licensed Educational Psychologist (LEP) exam eligibility - February 17, 2012
- Continuing Education (CE) Provider - January 3, 2012
Over 2,000 examinations were administered in the fourth quarter. Ten examination development workshops were conducted in October and November. The Board utilizes over 300 licensees as Subject Matter Experts (SME) to develop its examinations. A recent change in law now requires the Board to initiate a contract with each of these SMEs for this work. Board staff worked extensively to ensure that a contract for each SME was obtained by December 31, 2011.

Efforts to implement the examination restructure have begun. Board staff is working with the BreEZe team to ensure the modifications necessary in the BreEZe database system are incorporated by the effective date of January 1, 2013.

In regards to the Cashiering Unit, it has been fully staffed since November 2011. The processing times for renewal applications have been reduced from 29 days to 7 days, and processing times for other applications have been reduced from 35 days to 11 days.

Ms. Madsen provided an update on the Enforcement Unit. The Manager and the Special Investigator positions remain vacant. A tentative offer was made to an individual to fill the position of Special Investigator. This individual must complete a background check through the Division of Investigation, which takes about 30 days to complete. Interviews were conducted for the Enforcement Manager position; Board staff is waiting for hiring approval from the Department of Personnel Administration before an offer is extended.

Enforcement staff continues to meet or exceed their performance measures with the exception of the overall timeline it takes to process a disciplinary case. The current quarterly average is 960 days. However, this performance target is dependent upon the staffing and workload of outside agencies, such as the Attorney General’s Office (AG) and the Office of Administrative Hearings (OAH).

Ms. Madsen provided an update on BreEZe. Implementation of the BreEZe system for the Board is scheduled for August 2012. Board staff has invested a lot of time and resources towards the implementation of this new system.

Ms. Madsen provided an update on the customer satisfaction survey. The fourth quarter reflects an improvement in overall satisfaction, accessibility, and courtesy. The successful service rating dropped from the third quarter but is higher than last year’s rating. As the backlog continues to decrease, it is anticipated that the rating will improve.

Ms. Madsen provided an update on the Sunset Review. The Board’s Sunset Review hearing has been scheduled on March 19, 2012.

Ms. Madsen provided an update on the Financial Integrity and State Manager’s Accountability Act (FISMA) Report. Board staff submitted the report to DCA in November 2011. Staff identified the implementation of BreEZe, lack of sufficient resources to accomplish the Board’s work, and implementation of the examination restructure as potential risks that may prevent the Board from fulfilling its mandate. Staff also identified steps it will use to mitigate these potential risks.

c. Personnel Update

Ms. Madsen reported on the Board’s personnel update. Since November 2011, the Board has hired five staff members. Ms. Madsen introduced the Board’s new Administration and Examination Program Manager, Marc Mason. Mr. Mason comes to the Board from DCA’s Legislative and Policy Review Division and has worked on a number of the Board’s legislative issues.
d. Licensed Professional Clinical Counselor Update

Ms. Madsen provided an update on the Licensed Professional Clinical Counselor (LPCC) program. The grandparenting application period ended on December 31, 2011. A total of 3,433 grandparenting applications were received. Over 2,000 of those applicants were California LMFTs and 158 were LCSWs.

As of February 6, 2012, one hundred and twenty eight (128) candidates were approved to take the GAP examination. Fifty-four candidates were approved to take the Law and Ethics examination. As of February 28th, there are 9 registered Professional Clinical Counselor (PCC) interns and 2 LPCCs.

Ms. Madsen stated that as of two weeks ago, the two LPCC evaluators were processing intern applications received in October 2011. Two challenges that the LPCC evaluators are facing are: 1) volume, and 2) schools that have not submitted their program curriculums. Schools that have already been reviewed by the Board are listed on the Board’s website.

e. Association of Social Work Boards National Examination Update

Ms. Madsen provided an update on the progress of utilizing the Association of Social Work Boards (ASWB) national examination. In 2010, the Board moved forward and began discussions regarding implementation of the ASWB national examination. However, due to the implementation of the LPCC program, this project was placed on hold.

Following the November 2011 Board meeting, staff contacted ASWB to express our interest in resuming this project. Two meetings were held with ASWB representatives to discuss the format in which examination eligibility and examination results would be exchanged. Due to the implementation of BreEZe, this was an important component before beginning discussions regarding the contract.

The next step is to begin initiating the contract with ASWB to utilize the national examination.

VIII. Continuing Education Committee Report

Dr. Johnson provided a report on the Continuing Education Committee (Committee). The issues that the Committee is discussing:

- The possibility of an accreditation body for CE approval;
- Self-study versus online courses:
  - Definitions,
  - Differences;
- Grant CE credits to SMEs in exam development;
- Scope of approval – What authority does the Board have in approval of CE providers?
- Review of coursework and content
- Cite and fine CE providers
- Continuing competency model

The Committee is encouraging the associations to provide information and list issues that they want to discuss.

Tracy Rhine stated that the Committee will hold a public meeting on April 18th.
Dr. Harry Douglas added that there are two broad conceptual pieces: the accreditation model and the continuing competency model. He also stated that the Committee and Board staff will have one more meeting before the public meeting on April 18th.

Janlee Wong, National Association of Social Workers California Chapter (NASW-CA), expressed that there should be a way to involve the public and associations in these Committee meetings. He stated that he wants stakeholders to provide input.

Ms. Rhine explained the reasons for forming a 2-member committee are to reduce staff’s workload and be able to move the Committee’s work faster. A lot of the work involves research by Board staff. The idea is to have this type of work completed so that the information can be presented in a public meeting setting. She indicated that no decisions will be made at the Committee level. A public meeting will take place on April 18th. The outcomes of that meeting will be discussed at the Policy and Advocacy Committee where they will make recommendations to the Board regarding the work of the Continuing Education Committee.

Dr. Douglas stressed that there will be no operational decisions made by the Committee. The Committee needs the input from the community.

Dr. Wietlisbach also stressed that there is no intent to make decisions without public input. This is at the information-gathering stage, and there will be plenty of opportunities for the public and the associations to assist the Board with this endeavor.

Ms. Lock-Dawson inquired on the timeline for the Committee’s work. Ms. Rhine added that there are no established timelines at this point because this is at the beginning stages, and this will be a huge undertaking.

Jill Esptein, CAMFT, asked if the vision is to propose a comprehensive CE overhaul at the end of the process, or to address each issue one-at-a-time and make recommendations along the way.

Dr. Douglas replied that this is why the Committee wants to approach this conceptually first. Once the Committee knows what this model should look like, then it can be approached incrementally, and then timeframes can be established.

IX. Discussion Regarding California Marriage and Family Therapy Occupational Analysis and Collaboration with the Association of Marital and Family Therapy Regulatory Boards

Dr. Wietlisbach introduced Dr. Tracy Montez, Applied Measurement Services. Dr. Montez provided a brief update. The Association of Marital and Family Therapy Regulatory Boards (AMFTRB) sent a number of reports to Dr. Montez in January. She is currently reviewing those reports and formulating follow-up questions.

X. Policy and Advocacy Committee Report

a. Discussion and Possible Regulatory Action to Make Conforming Changes to California Code of regulations Title 16, Section 1833 Related to Telehealth

Rosanne Helms presented on the limit on telehealth experience for LMFT applicants.

Current law defines telehealth as a means of delivering health care services and public health via information and communication technologies. Current law limits the number of experience hours that an applicant for licensure as an LMFT may gain performing services via telehealth to 375 hours.
This statute is in conflict with California Code of Regulation (CCR) Title 16, Section 1833, pertaining to experience needed to qualify for LMFT licensure. Section 1833(a)(5) allows no more than 250 hours of experience counseling on the telephone to count toward the experience required for licensure. Staff believes that this regulation is outdated, as it only limits counseling via telephone and does not discuss counseling provided over the internet.

Karen Pines stated that there should be further discussion as to how the laws apply to the internet. She also stated that Skype should be considered when talking about online counseling, either for gaining hours or starting a business. Ms. Lonner stated that this would be a good future agenda item.

Christina Wong moved to authorize staff to make any non-substantive changes and pursue a regulation package to make the proposed amendment. Renee Lonner seconded. The Board voted unanimously (9-0) to pass the motion.

b. Discussion and Possible Action Regarding Legislative Clean-up to Business and Professions Code Sections 4980.44, 4980.48, 4980.78, 4980.80, 4999.62 and 4999.76

Ms. Helms presented additional items for the 2012 omnibus bill.

Upon review, staff has identified additional amendments to the Business and Professions Code (BPC) which are needed in order to add clarity and consistency to the Board’s licensing laws. Although draft language for the 2012 omnibus bill has already been approved by the Board and submitted to the legislature, these additional changes, if approved, would be amended in to the omnibus bill.

1. **Amend BPC Sections 4980.44 and 4980.48 – Addition of LPCCs to List of Supervisors.**

   SB 363 amended the law to allow LPCCs to supervise MFT interns if they meet specified additional training and education requirements. BPC Sections 4980.44 and 4980.48 list the allowable supervisors of MFT interns and trainees, but LPCCs are not included in this list.

   The recommendation is to amend Sections 4980.44 and 4980.48 to include LPCCs in the list of supervisors of MFT interns and trainees.

2. **Amend BPC Sections 4980.78, 4980.80, and 4999.62 – Reference to Health Insurance Portability and Accountability Act**

   Certain sections of the Board’s licensing laws require coursework in California law and ethics that covers, among other topics, the Health Insurance Portability and Accountability Act (HIPAA).

   During previous discussions of the 2012 omnibus bill at the October 13, 2011 Policy and Advocacy Committee Meeting and the November 9, 2011 Board Meeting, it was requested that reference to HIPAA in code sections 4999.32, 4999.57, 4999.58 and 4999.59 be removed and replaced with the term “state and federal laws related to confidentiality of patient health information.” The reasoning for this is that HIPAA is a federal law which in the future could be repealed or replaced with a different title, therefore making the reference obsolete.

   Amendments deleting the reference to HIPAA in Sections 4999.57, 4999.58, and 4999.59 and instead including the new reference term in Section 4999.32 have already been approved by the Board. However, there are three other code sections in LPCC licensing law that also reference HIPAA.
The recommendation is to amend the three code sections in LPCC licensing law to replace the reference to HIPAA with the term "state and federal laws related to confidentiality of patient health information."

This amendment would be in addition to the amendments to Sections 4980.78 and 4980.80 that have already been approved by the Board and submitted to the Legislature for inclusion in the 2012 omnibus bill.

3. Amend BPC Section 4999.76 – Continuing Education for Grandparented LPCC Licensees

SB 274 repealed the requirement that LPCC licensees who obtained their license through grandparenting and who were not already licensed by the Board as an LMFT or LCSW renew the license annually. However, Section 4999.76 still contains an annual continuing education requirement for these licensees, despite the annual renewal requirement being repealed.

The recommendation is to delete the requirement in Section 4999.76 that LPCC licensees who obtained their license through grandparenting and who were not already licensed by the Board as an LMFT or a LCSW must complete 18 hours of annual continuing education. If this provision is deleted, these licensees would be required to show completion 36 hours of continuing education every two years upon license renewal, as is required of all other LPCC licensees.

No discussion. No public comment.

_Sarita Kohli moved to direct staff to make any non-substantive changes to the proposed language, and submit to the Legislature for inclusion in the 2012 omnibus bill. Samara Ashley seconded. The Board voted unanimously (9-0) to pass the motion._

c. Discussion and Possible Action to Amend Business and Professions Code Sections Related to Accepting Passing Scores from National Examination Vendors

Ms. Helms presented on the acceptance of valid passing examination scores.

SB 704 restructures the examination process for the Board’s LMFT, LCSW, and LPCC applicants beginning in 2013. Under the restructure, all applicants would be required to take and pass a California law and ethics examination and a clinical examination.

For LPCCs, SB 704 specified that a valid passing score on the clinical examination must have been obtained less than seven years prior to the application date. This was based on current law for LMFTs and LCSWs that require a passing score on the standard written exam be no more than seven years old in order to be eligible to participate in the clinical vignette examination.

LPCC statute gave the Board the discretion to choose whether to offer its own clinical examination or to use the National Clinical Mental Health Examination (NCMHCE). Based on an in-depth audit that found the NCMHCE met California examination standards, the Board chose to use the NCMHCE. The law now requires that a passing score on the NCMHCE must be obtained less than seven years from the date of the application, and within seven years of the first attempt.
The Board has accepted the ASWB Clinical Level Examination as the acceptable clinical exam for LCSW licensure. ASWB has committed to making the changes required by the Board. If the changes are made in time, the Board hopes to be able to begin offering the ASWB exam as the clinical exam when the exam-restructure takes effect on January 1, 2013.

The Board is beginning evaluation of the AMFTRB national examination to see if it would be suitable for future use as the clinical exam for LMFT licensure in California. The Board will continue to administer its own clinical exam for LMFT licensure until the national exam is found to meet the prevailing standards for validation and use of licensing and certification tests in California, and the Board accepts the use of the exam.

SB 704 did not place a limit on when a passing score on the clinical exam must have been obtained for LMFT and LCSW candidates, as long as it is passed within seven years of the initial attempt. It does not account for out of state applicants who passed the exam several years ago. For example, if the Board were to accept a national exam for LCSWs, an applicant could, under SB 704, apply using a passing exam score that was 10 years old, despite the fact that the Board has determined previous versions of that exam did not meet California standards.

The Board required applicants for LCSW licensure to take the national ASWB written clinical level examination, plus a California state oral examination, from October 19, 1991 until March 30, 1999. At that time, the Board determined the ASWB clinical examination did not meet California standards, and switched to requiring passage of both a State-administered written and a State-administered oral examination.

The Board has never accepted a national examination for LMFT licensure.

Board staff contacted ASWB, AMFTRB, and the National Board for Certified Counselors (NBCC) to determine if other states impose limits on the age of a passing exam score. All three entities indicated that a majority of states accept their national examinations with no age restrictions.

Some states do impose age restrictions for applicants who do not hold current licensure in another state:

- In Massachusetts, passing scores of the NCMHCE exam are valid for five years for unlicensed individuals. Passing scores of the ASWB exam are valid for two years for unlicensed individuals. There is no age limit on exam scores for MFT applicants, although the state’s board is looking into adopting a limit.
- In Texas, passing scores of the NCE exam are valid for five years for unlicensed individuals.
- In Illinois, an unlicensed individual must apply for licensure as a clinical social worker within one year of passing the required exam.

Individuals in these states who hold the license for which they are applying in another state may be granted reciprocity without further exam. Policies vary from state to state and depend on license types; but in general, the exam is waived if a license is current and in good standing and if the state accepts the exam they have already taken toward licensure, and/or if licensing standards in the other state are deemed substantially equivalent.

The age of exam score issue was discussed at the January 2012 Policy and Advocacy Committee (Committee) meeting. The Committee directed staff to examine licensing laws
and regulations in the states of Massachusetts, Texas, and Illinois, for any age limits imposed on national exams.

Mr. Wong stated that typically the public sees the language changes at the committee level, has a discussion on the specific language changes at the committee level, then the changes are processed from Committee to the full Board. This process is taking a shortcut from the normal process.

Ms. Helms responded that staff proposed different language to the Committee, and staff was directed by Committee to change the language and bring it to the Board for discussion and action.

Dr. Wietlisbach explained that the policy used by Massachusetts was discussed at the Committee meeting. The Committee liked the idea of that policy and directed staff to draft language based on the Massachusetts' policy and bring it to the Board for consideration.

Mr. Wong expressed that a full review of the specific language with public comment in committee would be in order for this issue.

Ms. Rhine explained that this is something that is needed immediately because of the exam restructure taking place in January 2013 and the fact that the Board is trying to get ASWB specifically online beginning January 1, 2013. Legislation is needed this year.

Mr. Wong made additional comments/points for consideration:

- If a person has been in practicing for a number of years, does he/she need to take the exam again?
- The nature of the exam and its purpose versus the practitioner's area of practice/specialty.
- Age of exam score should not be solely considered. Other “checks and balances” are currently in place, such as continuing education requirements.

Ms. Kohli responded to Mr. Wong, stating that she would not want to take another exam. However, it is the license that allows one to practice in various specialties. If one chooses to practice in a specific specialty, the license still allows him/her to work in other areas. The licensee may never take a continuing education course related to their specialty. Since continuing competencies have not been established, there is no way for the Board to regulate what the licensee is doing after many years of taking the exam.

Ms. Pines responded to Mr. Wong, stating that it is not unreasonable to take another exam. A person may specialize in an area in his/her state, but may not practice that specialty in a new state.

Dr. Johnson stated that if a licensee from another state is currently licensed and practicing, in good standing, has not been disciplined, and passes the law and ethics exam, then he/she should be able to practice in California. The Committee is not trying to create obstacles to licensure in California.

Dean Porter, California Association for Licensed Professional Clinical Counselors (CALPCC), stated that since this proposal addresses only those who are not currently licensed, and the language does not imply retesting for currently licensed individuals, she is in favor of the recommended language.
Ms. Epstein complimented the Board and staff on the draft language presented pointing out that the language allows the current exam accepted for LMFTs as well as a national exam for LMFTs in the future.

Dr. Montez also complimented the Board and staff, stating that the amendments reflect balancing fairness to candidates and consumer protection. The language delineates between those who are licensed, in good standing and meet minimum competent standards versus those who are not licensed. She agrees with the 7 years because it is consistent with the uniform federal guidelines on employee selection procedures which suggest that scopes of practice are evaluated every 3-7 years, and the exams are based on the scopes of practice.

*Renee Lonner moved to direct staff to make the decided-upon changes to the amendments and submit to the Legislature for inclusion in a Board sponsored bill. Patricia Lock-Dawson seconded. The Board voted unanimously (9-0) to pass the motion.*

The Board took a break at approximately 3:15 p.m. and reconvened at 3:32 p.m.

d. Discussion and Possible Action Regarding Uniformity of Experience and Supervisions Provisions of LMFT, LPCC, LEP and LCSW licensing law

Ms. Helms presented on code uniformity.

The four license types issued and regulated by the Board have many similarities across each profession’s licensing law. The differing codes have evolved over time based on the unique differences and needs of each profession. In some cases, standardization in the law across the professions may help provide clarity and consistency to both licensees and consumers. In other cases, differences in the law may be needed in order to preserve the distinction between the professions.

At the January 2012 Policy and Advocacy Committee meeting, there was a request for Board guidance regarding the uniformity of the code sections. The questions raised were:

1. Should it be a goal of the Board to make the code sections more uniform, or should the differences in codes be regarded as a part of the uniqueness of each profession?
2. Are there any specific areas that could be made more consistent?

When making legislative and regulatory changes, staff considers uniformity across the codes on a case-by-case basis. When changing one particular code for one license type, if it makes sense to make a change for all professions, then such an amendment is proposed. Legislative and regulatory amendments that the Board is pursuing or has recently pursued:

1. **SB 943** - Last year’s Board omnibus bill amended several code sections to include LPCCs where the Board’s other license types were already included, and made consistent changes to each code section regarding number of registrants allowed for a supervisor.
2. **SB 274** - Added a definition of “engaging in practice” for each license type, as was already defined in LMFT law.
3. **SB 704** - Restructured the Board’s examination process for LMFT, LCSW, and LPCC applicants. A standard exam process was adopted for each of these three license types, setting up a pathway for the Board to possibly accept the national examination for each profession in the future.
4. Advertising Regulations - A regulatory change is being sought to make advertising regulations more consistent among the professions. It would require all licensees to include a license or registration number in an advertisement and would clarify acceptable titles and abbreviations for each license type.

5. Supervisors of ASW Regulations - Regulatory proposal seeks to require supervisors of ASWs be licensed for two years prior to commencing any supervision, which is currently required for supervisors of MFT and PCC interns.

There are several code sections which could be made more consistent across the professions. Some differences may exist for a reason, while others may be inadvertent differences made as the code sections have evolved separately over time. Below are some possible areas that may require evaluation:

1. Professional Experience Requirements - There are various differences in the hours of professional experience required for LMFT, LCSW, and LPCC applicants:
   a. LMFT applicants are required to obtain no more than 375 hours of counseling experience via telehealth, while LPCC applicants are limited to not more than 250 hours providing counseling via telephone. There is no similar provision in LCSW law.
   b. LMFT law allows 1,300 hours of supervised experience prior to the granting of the masters degree, while LCSW and LPCC laws do not allow this.

2. Supervision by a Licensee - LCSW licensing law requires at least 1,700 of the 3,200 hours of post-degree supervised experience be obtained under a LCSW. There is no similar provision in LMFT or LPCC law.

Staff would like the Board to consider the following questions:

- Should uniformity of the codes be a goal, or should it be decided on a case by case basis?
- Are there any particular areas where the Board sees a need to make its code sections consistent that should be prioritized?

Ms. Lonner stated that staff has done an excellent job alerting the Board of discrepancies. She expressed that uniformity should continue to be decided on a case-by-case basis, and does not see any areas of priority.

Ms. Wong concurred with Ms. Lonner, stating that the professions do not have to be identical and the Board should consider the uniqueness of each profession. With the LEP, it will not be possible for all professions to be uniform.

Ms. Porter suggested aligning the details where it would affect interns working in agencies, such as the requirements of 375 hours of counseling via telehealth for LMFT applicants and 250 hours for LPCC applicants.

Ms. Helms welcomed any ideas from associations that can be brought forward and discussed at the Board meetings.

Mr. Wong agreed with Ms. Porter, however, the professions are different. He suggested that the Board should bring in more licensees so that the Board can have a better idea of what the licensees do in the workforce and the range of their work.
Christina Wong moved to direct staff to use Board direction when drafting future legislative and regulatory proposals and to seek changes on a case-by-case basis. Dr. Judy Johnson seconded. The Board voted unanimously (9-0) to pass the motion.

e. Legislative Update

Ms. Helms presented the legislative update. The Board is running the following bills this year:

- SB 632 - This bill is an urgency measure which will amend the section of licensing law and restore the original intent of SB 363 of requiring only specified MFT trainees to enroll in practicum to counsel clients.
- SB 1527 - This bill proposal adds a requirement, similar to the requirements in the LMFT and LPCC licensing laws, that an individual seeking ASW registration or LCSW licensure complete coursework in California law and ethics.
- Bill proposal regarding the 90-day rule for MFT and PCC interns - This proposal would delete the 90-day rule for MFT and PCC intern applicants, and instead require that they be registered with the Board as an intern before gaining any experience hours toward licensure.
- Omnibus legislation - This bill proposal makes minor, technical, and non-substantive amendments to add clarity and consistency to current licensing law.

f. Rulemaking Update

Ms. Helms presented the rulemaking update. There are several pending regulatory proposals previously approved by the Board. Staff is currently running the proposals.

XI. Discussion and Possible Action Regarding Gaining Post-Degree Experience Prior to Registration with the Board

Ms. Helms presented on the deletion of the 90-day rule for LMFTs and LPCCs.

The Board approved the amendments contained in this proposal at its November 2011 meeting and directed staff to seek Board-sponsored legislation. However, due to concerns raised by stakeholders, members of the Board have requested a second Board discussion to revisit the issue.

Under current law, an applicant for MFT intern registration or PCC intern registration must apply for intern registration within 90 days of the granting of his or her qualifying degree in order to be able to count supervised experience hours gained toward licensure while he or she is waiting for the Board to grant registration as an intern. This allowance in the law is commonly referred to as “the 90-day rule.”

There is no 90-day rule for applicants for an ASW registration. They may not gain supervised experience hours until registered as an ASW.

The 90-day rule has been in LMFT licensing law for many years. It is now in the LPCC licensing law. Historically, the rule has assisted recent graduates in obtaining some of their supervised experience hours during the time they are waiting for their intern registration number. Before fingerprint processing was submitted electronically, there was at times a several-month wait between the time an applicant graduated and an intern registration number was issued. The 90-day rule allows the applicant to use any wait time to start gaining some of his or her supervised experience required for licensure, provided he or she submits an application to the Board within 90 days of the degree being granted.
On average, it currently takes the Board approximately 38 days to process MFT intern application and issue an intern registration number, if the application is complete. If there is any missing information, known as deficiencies, then the Board notifies the applicant, and the applicant has one year to provide the deficient information. Typically, applicants who are notified of deficiencies want to obtain their registration as soon as possible and therefore have an incentive to provide the Board with the deficient information quickly. MFT intern applications that have deficiencies take an average of 43 days to process.

The 90-day rule creates a loophole that was identified by the Enforcement Unit. Occasionally an individual waits until the very last minute to submit their criminal conviction information. In the meantime, the 90-day rule allows the individual to gain hours towards licensure. The violation may be egregious enough for the Board to decide to deny the registration or place other conditions on the applicant.

Dr. Wietlisbach stated that this issue was already discussed at the Board meeting in November, and the Board took a vote and decided on this issue. She asked if there was any new information that would change the Board’s original decision regarding this matter.

Ms. Epstein stated that she is not completely satisfied where the problem is in regards to the Enforcement Unit’s concern; there are no statistics showing that there is a problem with criminals gaining hours as a result of the 90-day rule. Ms. Epstein stated that most people who exercise the privilege of the 90-day rule have already been fingerprinted and working for agencies that require fingerprinting. The trainees that have not been fingerprinted are working under the supervision of a licensed professional. CAMFT is concerned about the continuity of care. The agencies are serving the most underserved population, and they would be short staffed if intern applicants could not earn hours and would end up leaving the agency for a job to earn an income.

Ms. Epstein also pointed out that in comparing the policies of other states that do not allow earning hours during this waiting period, those states also do not allow hours to be gained while in school. She expressed that it is not fair to use these states as examples. She urged Board to reconsider this.

Ms. Porter offered a different definition to the 90-day rule: the time period between degree conferral and issuance of a registration number. This would require the Board to process the applications in a quicker manner.

Ms. Pines stated that it is not realistic to limit the Board to processing applications within a certain timeframe given economic realities that the Board has recently experienced and could experience in the future.

Ms. Madsen stated that this would not address the peak application seasons when the Board receives an increase in applications. The Board has one intern evaluator who receives about 1,200 applications in one month during peak application season. In order to meet a processing deadline, this would create a fiscal impact on the Board as additional staff would have to be requested.

Paula Gershon, Program Manager, explained that it is not an application processing issue; it is an enforcement issue. The Enforcement Unit requests additional information from applicants regarding conviction information. If the applicant does not respond with the requested information, then the intern registration number cannot be issued.
If the concern is getting responses to the Enforcement Unit’s request for additional information, Ms. Epstein suggested reducing the time frame to submit information from 1 year to a shorter period of time.

Ms. Rhine explained that the enforcement piece may be one of the deficiencies. If the applicant deficiency is to complete a course, it may take a year to complete the coursework. The Board, unfortunately, cannot compel an individual to provide information that is requested by the Enforcement Unit.

Ms. Epstein asked if there is a reasonable time to correct deficiencies, or can “deficiencies” be better defined.

Ms. Rhine asked what the purpose is in waiting 90 days to apply with the Board; why not require the applicant to apply for registration with the Board before they can earn hours.

Ms. Epstein stated that maybe the 90 days can be compressed, and they can gain hours as long as they as they apply with the Board.

Ms. Rhine agreed with Ms. Epstein. She also reminded the Board that MFT interns are different; they are the only population that can gain pre-degree hours. LPCCs are modeled more like LCSWs. LCSWs cannot gain hours prior to registration. What is the necessity of the 90-day rule, or any rule, that would allow them to gain hours prior to registration?

Dr. Douglas suggested an interim registration process, similar to the physician assistant process.

Ms. Lonner stated that there is a significant consumer protection function in registering. A motivated application will send their application as soon as they graduate. A processing time of 38-48 days is not a huge sacrifice to wait for the registration.

Ms. Epstein agreed with Ms. Lonner. However, the current processing times could change to a longer period of time due to other factors.

Ms. Kohli asked is the supervisor of the trainee is responsible for any misconduct of the trainee. Ms. Madsen replied that the supervisor is not held accountable for the trainee’s conduct.

Olivia Loewy, American Association for Marriage and Family Therapy California Division (AAMFT-CA), urged the Board to consider a compromise and keeping the 90-day rule. She pointed out that the Board just voted on considering matters on a case-by-case basis. Ms. Loewy addressed the disruption of care as a result of this. She added that the agencies are struggling financially, so they depend on the trainees. The trainees are carefully trained and supervised in the public system.

Darlene Davis, Hope Counseling Center, supervises trainees in agencies. She stated that typically trainees do not get paid money; therefore, they want to earn their hours as quickly as possible. In an agency, the trainee wants the intern number because they can get hired and earn an income. Sometimes it can take up to 6 weeks to obtain the official transcript that confirms degree conferral. This could hurt the continuity of care (patient), the agencies, and the trainees.

Dr. Douglas suggested referring this back to the Policy and Advocacy Committee.
Luisa Mardones, California Society for Clinical Social Work (CSCSW), requested that ASWs be considered for allowance of the 90-day rule if the 90-day rule is to remain in effect for MFT intern applicants.

Mr. Wong stated that social workers have addressed the continuity of care successfully; they must issue a termination process with clients by end of the school term. He asked what the purpose is of gaining hours while in school versus gaining hours when out of school.

Juan Macias, University of Southern California School of Social Work, stated that when he applied to work for an agency, he did not earn hours right away, which is not uncommon. He added that agencies are concerned because they cannot be reimbursed for the same amount as if the individual was registered. Mr. Macias added that if the concern is consumer protection, he suggested that the applicant be required to get fingerprinted earlier in the process.

Ms. Pines recommended keeping the 90-day rule in place so that applicants can keep their hours.

Dr. Wietlisbach agreed that this should be referred back to the Policy and Advocacy Committee to discuss options.

Discussion took place on whether or not to rescind the previous motion on this matter. The Board agreed to not rescind the previous motion, but will refer this back to the Policy and Advocacy Committee to discuss options.

XII. Suggestions for Future Agenda Items

Ms. Lock-Dawson suggested a discussion regarding holding a Board workshop and to bring in a facilitator to identify common goals, work as a team, discuss processes, etc.

Mr. Wong stated that the Continuing Education Committee is a closed process. He appreciates that the Board is inviting the public to email suggestions for meetings. He suggested finding new ways to inform licensees and registrants regarding meetings that are available via webcast. He also requested making the meeting materials more easily accessible, and more comprehensible to the public.

XIII. Public Comment for Items Not on the Agenda

No public comments were made.

XIV. Adjournment

The meeting was adjourned at 4:51 p.m.
Thursday, March 1, 2012

Members Present
Dr. Christine Wietlisbach, Chair, Public Member
Patricia Lock-Dawson, Vice Chair, Public Member
Samara Ashley, Public Member
Dr. Harry Douglas, Public Member
Dr. Judy Johnson, LEP Member
Sarita Kohli, LMFT Member
Renee Lonner, LCSW Member
Karen Pines, LMFT Member
Christina Wong, LCSW Member

Staff Present
Kim Madsen, Executive Officer
Kristy Shellans, Legal Counsel

Members Absent
None

Guest List
On file

FULL BOARD OPEN SESSION

Dr. Christine Wietlisbach, Board Chair, opened the meeting at approximately 9:00 a.m. Kim Madsen called roll. A quorum was established.

FULL BOARD CLOSED SESSION

XV. Pursuant to Section 11126(a) of the Government Code, the Board Will Meet in Closed Session to Evaluate the Performance of the Board’s Executive Officer

FULL BOARD OPEN SESSION

XVI. Suggestions for Future Agenda Items
No suggestions were made for future agenda items.

XVII. Public Comment for Items Not on the Agenda
No public comments were made.

XVIII. Adjournment
The meeting was adjourned at 12:09 p.m.
**2011/2012 Budget**

The Board’s 2011/2012 budget is $7,779,000. Expenditures as of March 31, 2012, total $5,605,217. 26% of these expenditures are attributed to personnel expenses and 14% related to enforcement activities. The remaining expenses are related to operating expenses, equipment, and examination development.

Projected expenses through the end of the fiscal year, which include the additional BreEZe expenses, are estimated to be $7,598,447. A portion of the additional BreEZE expenses will be funded in FY 2011/2012 and the balance in FY 2012/2013. The Board is projecting an unencumbered balance of approximately $100,000 by the end of the fiscal year.

Total revenue as of March 31, 2012 is $6,799,964 which represents 88% of the Board’s total budget.

**Fund Condition**

The Board’s current fund condition reflects a reserve balance of 3.1 months.

**General Fund Loans**

The Board has loaned a total of $12.3 million dollars to the General Fund. The Board recently received information that it may receive some monies towards this loan in 2012/2013. Any repayment the Board receives will be reported at a subsequent meeting.

**2012/2013 Budget**

The proposed 2012/2013 budget for the Board is $8,153,000.

In mid May, the Department of Finance will release its May Revision adjustments. This document consists of an update of General Fund revenues and changes to expenditures for the 2012/2013 budget. In the event a budget is not enacted by July 1, 2013, Board staff is prepared so that operations are not adversely impacted.
# BBS Expenditure Report FY 2011/12

## Object Description

### Personal Services
- **Salary & Wages (Civ Svc Perm)**
  - FY 10/11: 1,583,478
  - Budget Allocation: 1,982,964
  - Current as of 3/31/2012: 1,271,317
  - Projections to Year End: 1,950,000
  - Unencumbered Balance: 32,964
- **Salary & Wages (Stat Exempt)**
  - FY 10/11: 83,342
  - Budget Allocation: 89,607
  - Current as of 3/31/2012: 66,960
  - Projections to Year End: 90,000
  - Unencumbered Balance: (393)
- **Temp Help (907)(Seasonals)**
  - FY 10/11: 14,224
  - Budget Allocation: 7,105
  - Current as of 3/31/2012: 0
  - Projections to Year End: 12,900
  - Unencumbered Balance: 7,105
- **Temp Help (915)(Proctors)**
  - FY 10/11: 0
  - Budget Allocation: 444
  - Current as of 3/31/2012: 0
  - Projections to Year End: 444
  - Unencumbered Balance: 444
- **Board Memb (Per Diem)**
  - FY 10/11: 12,500
  - Budget Allocation: 12,900
  - Current as of 3/31/2012: 8,200
  - Projections to Year End: 12,900
  - Unencumbered Balance: 0
- **Overtime**
  - FY 10/11: 769
  - Budget Allocation: 14,533
  - Current as of 3/31/2012: 0
  - Projections to Year End: 14,533
  - Unencumbered Balance: 0

### Totals Staff Benefits
- FY 10/11: 808,258
  - Budget Allocation: 936,926
  - Current as of 3/31/2012: 641,427
  - Projections to Year End: 840,000
  - Unencumbered Balance: 96,926

### Salary Savings
- FY 10/11: (98,132)

### Totals, Personal Services
- FY 10/11: 2,502,571
  - Budget Allocation: 2,946,347
  - Current as of 3/31/2012: 1,987,904
  - Projections to Year End: 2,892,900
  - Unencumbered Balance: 53,447

### Operating Exp & Equip
- **Fingerprint Reports**
  - FY 10/11: 47,511
  - Budget Allocation: 34,454
  - Current as of 3/31/2012: 11,369
  - Projections to Year End: 20,000
  - Unencumbered Balance: 14,454
- **Printing**
  - FY 10/11: 28,997
  - Budget Allocation: 78,000
  - Current as of 3/31/2012: 26,101
  - Projections to Year End: 9,500
  - Unencumbered Balance: 27,013
- **Communication**
  - FY 10/11: 0
  - Budget Allocation: 325
  - Current as of 3/31/2012: 0
  - Projections to Year End: 325
  - Unencumbered Balance: 325

### Totals, Operating Exp & Equip
- FY 10/11: 107,268
  - Budget Allocation: 127,684
  - Current as of 3/31/2012: 53,992
  - Projections to Year End: 110,000
  - Unencumbered Balance: 17,684

### Departmental Prorata
- **DP Billing (424.03)**
  - FY 10/11: 389,238
  - Budget Allocation: 463,594
  - Current as of 3/31/2012: 352,447
  - Projections to Year End: 463,594
  - Unencumbered Balance: 0
- **Indirect Distribution Costs (427)**
  - FY 10/11: 483,649
  - Budget Allocation: 398,157
  - Current as of 3/31/2012: 293,868
  - Projections to Year End: 406,469
  - Unencumbered Balance: (8,312)
- **Public Affairs (427.34)**
  - FY 10/11: 34,911
  - Budget Allocation: 27,473
  - Current as of 3/31/2012: 20,604
  - Projections to Year End: 10,000
  - Unencumbered Balance: 10,463

### Totals, Departmental Prorata
- FY 10/11: 1,117
  - Budget Allocation: 110,978
  - Current as of 3/31/2012: 6,150
  - Projections to Year End: 35,000
  - Unencumbered Balance: 75,978

### Exam Expenses
- **Exam Site Rental**
  - FY 10/11: 90,109
  - Budget Allocation: 99,630
  - Current as of 3/31/2012: 34,953
  - Projections to Year End: 99,630
  - Unencumbered Balance: 0
- **Exam Contract (PSI)**
  - FY 10/11: 401,331
  - Budget Allocation: 358,659
  - Current as of 3/31/2012: 227,974
  - Projections to Year End: 240,000
  - Unencumbered Balance: 12,926

### Enforcement
- **Attorney General**
  - FY 10/11: 965,443
  - Budget Allocation: 801,588
  - Current as of 3/31/2012: 750,819
  - Projections to Year End: 970,000
  - Unencumbered Balance: (168,412)
- **Office of Admin. Hearing**
  - FY 10/11: 167,825
  - Budget Allocation: 154,926
  - Current as of 3/31/2012: 106,906
  - Projections to Year End: 145,000
  - Unencumbered Balance: 9,926
- **Court Reporters**
  - FY 10/11: 8,026
  - Budget Allocation: 4,950
  - Current as of 3/31/2012: 4,950
  - Projections to Year End: 10,000
  - Unencumbered Balance: 5,046
- **Evidence/Witness Fees**
  - FY 10/11: 57,889
  - Budget Allocation: 94,955
  - Current as of 3/31/2012: 25,339
  - Projections to Year End: 60,000
  - Unencumbered Balance: 34,955
- **Division of Investigation**
  - FY 10/11: 337,810
  - Budget Allocation: 248,962
  - Current as of 3/31/2012: 186,722
  - Projections to Year End: 320,000
  - Unencumbered Balance: (71,038)
- **LPCC**
  - FY 10/11: 214,625
  - Budget Allocation: 262,332
  - Current as of 3/31/2012: 17,000
  - Projections to Year End: 17,000
  - Unencumbered Balance: 15,000

### Minor Equipment (226)
- FY 10/11: 24,145
  - Budget Allocation: 30,600
  - Current as of 3/31/2012: 16,018
  - Projections to Year End: 17,000
  - Unencumbered Balance: 13,600

### Equipment, Replacement (452)
- FY 10/11: 0
  - Budget Allocation: 8,000
  - Current as of 3/31/2012: 51,232
  - Projections to Year End: 57,000
  - Unencumbered Balance: (49,000)

### Equipment, Additional (472)
- FY 10/11: 0
  - Budget Allocation: 0
  - Current as of 3/31/2012: 0
  - Projections to Year End: 0
  - Unencumbered Balance: 0

### Vehicle Operations
- FY 10/11: 0
  - Budget Allocation: 19,000
  - Current as of 3/31/2012: 0
  - Projections to Year End: 19,000
  - Unencumbered Balance: 19,000

### Total O&E
- FY 10/11: 4,400,619
  - Budget Allocation: 4,759,208
  - Current as of 3/31/2012: 3,617,313
  - Projections to Year End: 4,705,547
  - Unencumbered Balance: 53,661

### Total Expenditures
- FY 10/11: $6,903,190
  - Budget Allocation: $7,705,555
  - Current as of 3/31/2012: $5,605,217
  - Projections to Year End: $7,598,447
  - Unencumbered Balance: $107,108
## NOTE: $6.0 M GF Loan (2002/03) $3.0M (2008/09) $3.3M (2011/12)

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<th>Governor's Budget BY 2012-13</th>
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<td>Revenues:</td>
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**NOTES:**

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR 2010-11 AND ON-GOING.
B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR.
## BBS Revenue Analysis

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<th>FY 10/11</th>
<th>FY 11/12</th>
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<td>August</td>
<td>$882,032.22</td>
<td>$612,879.75</td>
<td>$614,882.97</td>
</tr>
<tr>
<td>September</td>
<td>$866,668.07</td>
<td>$888,896.00</td>
<td>$1,002,602.57</td>
</tr>
<tr>
<td>October</td>
<td>$560,398.81</td>
<td>$560,370.10</td>
<td>$723,621.83</td>
</tr>
<tr>
<td>November</td>
<td>$423,006.21</td>
<td>$393,690.35</td>
<td>$601,895.03</td>
</tr>
<tr>
<td>December</td>
<td>$503,837.85</td>
<td>$560,118.27</td>
<td>$816,772.93</td>
</tr>
<tr>
<td>January</td>
<td>$431,585.53</td>
<td>$527,079.68</td>
<td>$1,180,871.34</td>
</tr>
<tr>
<td>February</td>
<td>$430,200.00</td>
<td>$409,637.17</td>
<td>$646,040.15</td>
</tr>
<tr>
<td>March</td>
<td>$569,946.20</td>
<td>$597,687.20</td>
<td>$576,972.25</td>
</tr>
<tr>
<td>April</td>
<td>$411,491.57</td>
<td>$512,561.91</td>
<td></td>
</tr>
<tr>
<td>May</td>
<td>$338,009.28</td>
<td>$322,487.96</td>
<td></td>
</tr>
<tr>
<td>June</td>
<td>$378,260.00</td>
<td>$432,003.03</td>
<td></td>
</tr>
<tr>
<td>FM 13</td>
<td>$6,175.21</td>
<td>($59,968.77)</td>
<td></td>
</tr>
</tbody>
</table>
**Board Statistics**

Attached for your review are the quarterly performance statistics. Processing times on the report reflect an average for the quarter.

**Board Staffing**

The Board has one vacancy within its Enforcement Unit. We are in the process of recruiting for this position. A review of Board operations necessitated reclassifying an existing vacancy in the Enforcement Unit and transferring that position to the LPCC licensing unit. Board staff recently completed interviews for this position in the LPCC unit. We are awaiting approval to extend a formal offer.

**Licensing and Examination Program**

**Licensing Program**

The first quarter statistics reflect an overall increase in application volume. Marriage and Family Therapist (MFT) Intern applications increased by 5%. MFT examination eligibility applications increased by 28% and Licensed Clinical Social Work examination eligibility applications increased by 26%. Licensed Educational Psychologist applications increased by 47%. The only decrease in application volume was in the Associate Social Worker applications, which decreased 9% from the previous quarter.

The Board’s current processing times are noted below. Figures below reflect processing times as of March 31, 2012.

<table>
<thead>
<tr>
<th>License type</th>
<th>Current Processing Times</th>
<th>Previous report Processing Times</th>
<th>Increase/Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td>MFT Intern</td>
<td>54 days</td>
<td>83 days</td>
<td>- 29 days</td>
</tr>
<tr>
<td>MFT Examination</td>
<td>177 days</td>
<td>180 days</td>
<td>- 3 days</td>
</tr>
<tr>
<td>ASW</td>
<td>51 days</td>
<td>85 days</td>
<td>- 34 days</td>
</tr>
<tr>
<td>LCSW Examination</td>
<td>70 days</td>
<td>91 days</td>
<td>- 21 days</td>
</tr>
<tr>
<td>LEP Examination</td>
<td>95 days</td>
<td>91 days</td>
<td>+ 4 days</td>
</tr>
<tr>
<td>CE Provider</td>
<td>105 days</td>
<td>81 days</td>
<td>+ 24 days</td>
</tr>
</tbody>
</table>

The Board’s efforts to reduce the MFT examination eligibility application backlog resulted in the approval of an additional 112 applications from the last quarter report. Board staff continues to work diligently to further reduce this backlog.

**LPCC Program**

Currently, the LPCC licensing unit is comprised of two staff members. To date, the Board has received 91 intern applications, 39 LPCC applications, and 3433 LPCC grandparent applications. Due to the complexity of the LPCC program and limited resources, the process to approve applications is significantly delayed. Recently, the Board redirected a vacant position
from another unit to the Licensing Unit in an effort to add another Licensing Analyst to the LPCC licensing staff. The Board anticipates this addition will help to expedite the approval process.

As of March 31, 2012, the Board has 15 Licensed Professional Clinical Counselors and 14 Professional Clinical Counselor Interns.

**Examination Program**

A total of 1895 examinations were administered in the first quarter. 16 examination development workshops were conducted in January through March.

**Administration Program**

The cashiering unit is currently processing renewal applications within 7 days of receipt. All other applications are processed within 3 days.

**Enforcement Program**

The Board was unable to fill its Special Investigator position. A review of Board operations resulted in reclassifying and transferring this position to the LPCC licensing unit. Efforts to obtain an additional manager in the Enforcement Unit were not successful. The Board will fill this position at its current funding level. This position will serve as the lead analyst for the Criminal Conviction staff.

Enforcement staff continues to meet or exceed the established performance measures (PM) with the exception of PM 4, Formal Discipline. DCA established the performance target for PM 4 at 540 days (18 months). The current quarterly average is 973 days. This performance target is dependent upon the staffing and workload of outside agencies, such as the Attorney General’s Office (AG) and the Office of Administrative Hearings.

**BreEZe**

Board staff continues to work with the BreEZe team and vendor to ensure that our business processes and needs are accurately reflected in our new database system. Significant board resources are involved in reviewing and testing the design. Training classes will be conducted prior to the Board’s “go live” date. All staff is scheduled to complete this training. Recently, the Board was informed its “go live” date was changed from August 2012 to September 2012.

**Customer Satisfaction Survey**

The first quarter reflects an improvement in overall satisfaction, successful service, accessibility, and courtesy since the last quarter report.

<table>
<thead>
<tr>
<th>Category</th>
<th>Current Quarter Rating (1st Qtr.)</th>
<th>Previous Quarter Rating (4th Qtr.)</th>
<th>Prior Year Rating (1st Qtr.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Satisfaction</td>
<td>3.0</td>
<td>2.6</td>
<td>2.9</td>
</tr>
<tr>
<td>Successful Service</td>
<td>47</td>
<td>41</td>
<td>50</td>
</tr>
<tr>
<td>Accessibility</td>
<td>2.8</td>
<td>2.3</td>
<td>2.6</td>
</tr>
<tr>
<td>Courtesy</td>
<td>3.8</td>
<td>3.5</td>
<td>3.9</td>
</tr>
</tbody>
</table>
Board of Behavioral Sciences
Quarterly Statistical Report - as of March 31, 2012

Introduction
This report provides statistical information relating to various aspects of the Board’s business processes. Statistics are grouped by unit. The report relies predominantly on tables with accompanying “sparkbars,” which are small graphs displaying trend over time.

Reading the Report
Items on the report are aggregated by quarter. The top of the column indicates the quarter and the year (Q111 = 1/2011-3/2011; Q211 = 4/2011-6/2011). Common abbreviations for licensees and registrants: LCSW = Licensed Clinical Social Worker; LEP = Licensed Educational Psychologist; LMFT = Licensed Marriage and Family Therapist; LPCC = Licensed Professional Clinical Counselor; ASW = Associate Clinical Social Worker; PCE = Continuing Education Provider. Other common abbreviations: Proc = Process; Def = Deficiency; CV= Clinical Vignette; AG = Attorney General.

Cashiering Unit
The Board’s Cashiering Unit processes license renewals and applications. Approximately 85% of renewal processing occurs in the Department of Consumer Affairs Central Cashiering Unit.

Renewals Processed In-House

<table>
<thead>
<tr>
<th>Sparkbars (Current Val) (Low/High)</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>Q211</th>
<th>Q311</th>
<th>Q411</th>
<th>Q112</th>
<th>Total/ Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2047</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>15244</td>
</tr>
<tr>
<td>[1571][2401]</td>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>[1124][2015]</td>
<td>1822</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>[8][29]</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

|Received| 1374 | 1665 | 1487 | 1124 | 2015 | 1814 | 1197 | 1822 | 12498     |

|Proc Time| 12   | 8    | 10   | 22   | 23   | 18   | 29   | 9    | 16        |

ATS Cashiering Items (e.g. exam eligibility apps, registration apps, etc)

<table>
<thead>
<tr>
<th>Sparkbars (Current Val) (Low/High)</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>Q211</th>
<th>Q311</th>
<th>Q411</th>
<th>Q112</th>
<th>Total/ Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7562</td>
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<tr>
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</tr>
<tr>
<td>[4512][6814]</td>
<td>6814</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>[6][12]</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

|Received| 5207 | 5742 | 4611 | 4512 | 5315 | 5399 | 6543 | 6814 | 44143     |

|Proc Time| 6    | 6    | 10   | 12   | 9    | 12   | 11   | 8    | 9         |

Initial Licenses Issued*

<table>
<thead>
<tr>
<th>Sparkbars (Current Val) (Low/High)</th>
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<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>Q211</th>
<th>Q311</th>
<th>Q411</th>
<th>Q112</th>
<th>Total/ Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>260</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>[12][36]</td>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>[221][456]</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

|LCS*| 172  | 191  | 209  | 173  | 319  | 216  | 262  | 260  | 1802      |

|LEP*| 12   | 36   | 12   | 13   | 20   | 28   | 18   | 12   | 151       |

|MFT*| 352  | 342  | 409  | 221  | 456  | 267  | 315  | 411  | 2773      |
**Enforcement Unit**

The Board’s Enforcement Unit investigates consumer complaints and reviews prior and subsequent arrest reports for registrants and licensees. The pending total is a snapshot of all pending items at the close of a quarter.

**Complaint Intake***

<table>
<thead>
<tr>
<th>Complaints</th>
<th>Q110</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>Q211</th>
<th>Q311</th>
<th>Q411</th>
<th>Q0112</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received</td>
<td>265</td>
<td>247</td>
<td>261</td>
<td>242</td>
<td>210</td>
<td>259</td>
<td>237</td>
<td>222</td>
<td>174</td>
<td>2117</td>
</tr>
<tr>
<td>Closed without Assignment for</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Investigation</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assigned for Investigation</td>
<td>264</td>
<td>247</td>
<td>261</td>
<td>242</td>
<td>210</td>
<td>259</td>
<td>237</td>
<td>222</td>
<td>274</td>
<td>2216</td>
</tr>
<tr>
<td>Average Days to Close or Assigned for Investigation</td>
<td>6</td>
<td>6</td>
<td>7</td>
<td>6</td>
<td>5</td>
<td>4</td>
<td>4</td>
<td>3</td>
<td>5</td>
<td>+</td>
</tr>
<tr>
<td>Pending</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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</table>

**Convictions/Arrest Reports**

<table>
<thead>
<tr>
<th>Q110</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>Q211</th>
<th>Q311</th>
<th>Q411</th>
<th>Q0112</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received</td>
<td>259</td>
<td>289</td>
<td>315</td>
<td>258</td>
<td>228</td>
<td>207</td>
<td>190</td>
<td>219</td>
<td>234</td>
</tr>
<tr>
<td>Closed / Assigned for Investigation</td>
<td>259</td>
<td>290</td>
<td>315</td>
<td>258</td>
<td>228</td>
<td>208</td>
<td>190</td>
<td>219</td>
<td>234</td>
</tr>
<tr>
<td>Average Days to Close</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>2</td>
<td>4</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>+</td>
</tr>
<tr>
<td>Pending</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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**Investigation**

**Desk Investigation**

<table>
<thead>
<tr>
<th>Q110</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>Q211</th>
<th>Q311</th>
<th>Q411</th>
<th>Q0112</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assigned</td>
<td>523</td>
<td>537</td>
<td>576</td>
<td>500</td>
<td>438</td>
<td>467</td>
<td>428</td>
<td>441</td>
<td>508</td>
</tr>
<tr>
<td>Closed</td>
<td>424</td>
<td>549</td>
<td>433</td>
<td>394</td>
<td>495</td>
<td>580</td>
<td>489</td>
<td>416</td>
<td>461</td>
</tr>
<tr>
<td>Average Days to Close</td>
<td>104</td>
<td>91</td>
<td>115</td>
<td>124</td>
<td>135</td>
<td>140</td>
<td>163</td>
<td>126</td>
<td>+</td>
</tr>
<tr>
<td>Pending</td>
<td>596</td>
<td>583</td>
<td>707</td>
<td>813</td>
<td>752</td>
<td>634</td>
<td>568</td>
<td>590</td>
<td>641</td>
</tr>
</tbody>
</table>

**Field Investigation (Non-Sworn)**

<table>
<thead>
<tr>
<th>Q110</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>Q211</th>
<th>Q311</th>
<th>Q411</th>
<th>Q0112</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assigned</td>
<td>15</td>
<td>10</td>
<td>11</td>
<td>3</td>
<td>8</td>
<td>1</td>
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</tr>
<tr>
<td>Closed</td>
<td>9</td>
<td>11</td>
<td>24</td>
<td>14</td>
<td>10</td>
<td>14</td>
<td>4</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
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<td>424</td>
<td>371</td>
<td>372</td>
<td>386</td>
<td>416</td>
<td>481</td>
<td>332</td>
<td>474</td>
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<tr>
<td>Pending</td>
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<td>42</td>
<td>30</td>
<td>28</td>
<td>17</td>
<td>12</td>
<td>12</td>
<td>9</td>
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**Field Investigation (Sworn)**

<table>
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<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>Q211</th>
<th>Q311</th>
<th>Q411</th>
<th>Q0112</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assigned</td>
<td>1</td>
<td>3</td>
<td>9</td>
<td>6</td>
<td>2</td>
<td>12</td>
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<td>4</td>
<td>6</td>
<td>4</td>
<td>6</td>
<td>8</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>Average Days to Close</td>
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<td>591</td>
<td>927</td>
<td>518</td>
<td>362</td>
<td>450</td>
<td>582</td>
<td>294</td>
<td>407</td>
</tr>
<tr>
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<td>17</td>
<td>22</td>
<td>20</td>
<td>18</td>
<td>24</td>
<td>21</td>
<td>20</td>
<td>16</td>
</tr>
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</table>
### Enforcement Actions

This section does not include subsequent discipline on a license.

<table>
<thead>
<tr>
<th></th>
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<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>Q211</th>
<th>Q311</th>
<th>Q411</th>
<th>Q0112</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>AG Cases Initiated</td>
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<td>29</td>
<td>35</td>
<td>19</td>
<td>22</td>
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<td>37</td>
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<td>34</td>
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<tr>
<td>AG Cases Pending</td>
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<td>153</td>
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<td>163</td>
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<td>3</td>
<td>8</td>
<td>2</td>
<td>7</td>
<td>6</td>
<td>3</td>
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<td>18</td>
<td>14</td>
<td>24</td>
<td>18</td>
<td>21</td>
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<td>11</td>
<td>12</td>
<td>5</td>
<td>11</td>
<td>2</td>
<td>9</td>
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<td>Stipulations Adopted</td>
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<td>18</td>
<td>12</td>
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<td>14</td>
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<td>293</td>
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<td>269</td>
<td>288</td>
<td>262</td>
<td>362</td>
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</table>

### Complaint Intake *
Complaints Received by the Program. Measured from date received to assignment for investigation or closure without action.

### Investigations **
Complaints investigated by the program whether by desk investigation or by field investigation. Measured by date the complaint is received to the date the complaint is closed or referred for enforcement action. If a complaint is never referred for Field Investigation, it will be counted as 'Closed' under Desk Investigation. If a complaint is referred for Field Investigation, it will be counted as 'Closed' under Non-Sworn or Sworn.

### Disciplinary Orders Average Days to Complete ***
Measured by the date the complaint is received to the date the order became effective.

### Citations ****
Measured by the date the complaint is received to the date the citation was issued.
+ unable to capture average data for more than a 12 month cycle

### Licensing Unit
The Board's Licensing Unit evaluates applications for registration and examination eligibility. This involves verifying educational and experience qualifications to ensure they meet requirements defined in statute and regulation.

### LCSW Examination Eligibility Applications

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<thead>
<tr>
<th>Received</th>
<th>Q210</th>
<th>Q310</th>
<th>Q410</th>
<th>Q111</th>
<th>Q211</th>
<th>Q311</th>
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<th>Q112</th>
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<td>Total/Avg</td>
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*Applications evaluated and sent a deficiency notice/made exam eligible

**LEP Examination Eligibility Applications**

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**ASW Registration Applications**

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**MFT Intern Registration Applications**

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LPC Intern Registration Applications

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Examination Unit

The Board’s Examination Unit processes complaints and performs other administrative functions relating to the Board’s examination processes.

Exam Administration

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Customer Satisfaction Survey

The Board maintains a Web based customer satisfaction survey.
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<td>134</td>
<td>115</td>
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</table>

<sup>a</sup> Average rating based on 1-5 scale (1=Unacceptable, 5=Excellent)

<sup>b</sup> Percent answered "Yes"
Performance Measures

**Q3 Report (January - March 2012)**

To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

### Volume

**Number of complaints and convictions received.**

**Q3 Total:** 508  
Complaints: 234  
Convictions: 274  
**Q3 Monthly Average:** 169

### Intake

**Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.**

**Target:** 5 Days  
**Q3 Average:** 4 Days
**Intake & Investigation**
Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

**Target:** 180 Days  
**Q3 Average:** 116 Days

---

**Formal Discipline**
Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Bureau, and prosecution by the AG)

**Target:** 540 Days  
**Q3 Average:** 973 Days

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**Probation Intake**
Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

**Target:** 10 Days  
**Q3 Average:** 1 Day
Probation Violation Response
Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 7 Days
Q3 Average: N/A

The Board did not handle any probation violations this quarter.

Note: Cycle times are affected by the current hiring freeze and are subject to outside agencies workload and staffing constraints.
To: Board Members

From: Laurie Williams
Personnel Liaison

Subject: Personnel Update

New Employees

Steve Sodergren has accepted the Assistant Executive Officer position effective, May 1, 2012. Steve has a Bachelor of Arts Degree in English from California State University Sacramento. He previously served as the Board’s Licensing Manager and Enforcement Manager from 2006 to 2008. Steve transferred to the Board from a management position in the Medi-Cal Procurement Unit for the Department of Health Care Services. Steve brings a wealth of knowledge, skills, and ability to the Board and will be a valuable member of our team.

Departures

No departures to report at this time.

Vacancies

The Board’s was not successful in finding a qualified candidate to fill the part-time Special Investigator (Non-Sworn) vacancy in the Enforcement Unit. A Request for Personnel Action package has been submitted to DCA Office of Human Resources to reclass the position to a Staff Services Analyst to act as a Licensed Professional Clinical Counselor evaluator in the Licensing Unit. The Board’s Licensing Manager recently completed interviews for this vacancy and is awaiting hiring approval to make a formal offer to the chosen candidate.

The Board is also requesting to fill a vacant Associate Governmental Program Analyst within the Enforcement Unit. The duties of this vacancy will act as a lead for the Applicant/Conviction Investigation, Complaint Intake, and Fingerprint Units. The Board is awaiting approval of this request and will begin recruitment shortly for this vacancy.
Blank Page
On March 19, 2012, Dr. Christine Wietlisbach, Renee Lonner, and Kim Madsen attended the Senate Business Professions and Economic Development Committee Sunset Review hearing. The purpose of the hearing was to address the questions from the Committee following its review of the Board of Behavioral Sciences’ Sunset Review report.

As requested by the Committee, the Board discussed four of the fifteen questions raised in the Committee’s background paper. A written response to all fifteen questions was provided to the Committee on April 19, 2012. Several professional associations also attended the hearing and provided testimony in support of extending the Board.

The Committee’s background paper and the Board’s written response are attached for your review. Currently, Senate Bill 1238 proposes extending the Board until January 1, 2017.
BACKGROUND PAPER FOR THE
BOARD OF BEHAVIORAL SCIENCES
(Oversight Hearing, March 19, 2012, Senate Committee on
Business, Professions and Economic Development)

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS
FOR THE BOARD OF BEHAVIORAL SCIENCES

BRIEF OVERVIEW OF THE
BOARD OF BEHAVIORAL SCIENCES

History and Function of the Board

The Board of Behavioral Sciences (BBS) is one of the regulatory entities within the Department of Consumers Affairs (DCA). The BBS licenses and regulates Licensed Clinical Social Workers (LCSW), Licensed Marriage and Family Therapists (LMFT), Licensed Educational Psychologists (LEP), and Licensed Professional Clinical Counselors (LPCC). Additionally, the Board registers Associate Social Workers (ASW), Marriage and Family Therapist Interns (MFT Interns), Professional Clinical Counselor Interns (PCC Interns), and Continuing Education Providers.

The BBS’s mission is to protect Californians by promoting consumer awareness, advocating for improved mental health services, and setting, communicating, and enforcing standards. In order to accomplish its mission, the BBS develops and administers licensure examinations, investigates consumer complaints and criminal convictions, responds to emerging changes and trends in the mental health profession legislatively or through regulations, and creates publications for consumers, students, and licensees.

The BBS’s statutes and regulations require a license before an individual may engage in the practice of Licensed Clinical Social Work, Licensed Marriage and Family Therapy, Licensed Educational Psychology, and Licensed Professional Clinical Counseling. These statutes and regulations set forth the requirements for registration and licensure and provide the BBS the authority to discipline a registrant or licensee.

Legislation signed on July 18, 1945, by Governor Earl Warren created the Board of Social Work Examiners under the Department of Professional and Vocational Standards (renamed the Department of Consumer Affairs in 1970). California became the first state to register social workers. The first board members were comprised of seven members: two “lay persons” and four social workers. All the members were appointed by the Governor.

During the first 16 months of its existence, this board registered 4,098 social workers. The intent of certification was to identify competent professionals who were working for higher standards and services to the public.
A 1962 California State Assembly investigation regarding the fraudulent practice of marriage counseling contributed to the 1963 creation of the Marriage, Family, and Child Counselor Act. Under this Act, the Board of Social Work Examiners received the responsibility of licensing and regulating Marriage, Family, and Child Counselors. Soon after the addition of Marriage, Family, and Child Counselors, the Board of Social Work Examiners was renamed the Social Worker and Marriage Counselor Qualifications Board.

After 1969, anyone who wanted to practice clinical social work was required to hold a license. The addition of Licensed Educational Psychologists in 1970 to this board’s regulatory responsibilities inspired a new name, the Board of Behavioral Sciences Examiners. In 1997, the Board of Behavioral Sciences Examiners was officially changed to its present name, the Board of Behavioral Sciences.

Effective January 1, 2010, a fourth mental health profession, Licensed Professional Clinical Counselor, was added to the Board’s jurisdiction. Today, the BBS is responsible for the regulatory oversight of nearly 77,000 licensees. Current law provides for thirteen board members; six licensees and seven public members. Eleven members are appointed by the Governor, one public member is appointed by the Speaker of the Assembly, and one public member is appointed by the Senate Rules Committee. In 2010, a public was added to the BBS and in 2012, a LPCC member was added to the BBS increasing the board composition to thirteen members, however, it is still a public majority board.

The BBS currently has three committees; the Policy and Advocacy Committee, the Licensing and Examination Committee, and the Compliance and Enforcement Committee.

The Policy and Advocacy Committee is comprised of three board members. The work of the Committee is focused on proposed legislation, legislative changes, proposed regulations, and regulatory changes that respond to emerging trends or concerns in the mental health profession that may affect the BBS’s licensees and registrants.

The Licensing and Examination Committee consists of three board members. This Committee discusses issues and concerns related to the BBS’s statutory requirements for applicants to enter the examination cycle, requirements for licensure, as well as the examination process. The Committee also reviews the BBS’s licensing and examination statistical data.

The Compliance and Enforcement Committee has three board members. This Committee reviews all statistical data related to the enforcement process. The Committee discusses topics related to consumer protection and enforcement process improvements.

The current committee structure provides multiple opportunities for consumers, licensees, registrants, professional organizations, and educational institutions to actively participate and comment about topics before the BBS. All committee recommendations are presented to the BBS for consideration.
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<thead>
<tr>
<th>Name</th>
<th>Term Start</th>
<th>Term End</th>
<th>Appointing Authority</th>
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<tbody>
<tr>
<td>Dr. Christine Wietlisbach, public member</td>
<td>2/4/10</td>
<td>6/1/15</td>
<td>Senate Rules Committee</td>
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<tr>
<td>Dr. Wietlisbach is a practicing occupational therapist at Eisenhower Medical Center, and a faculty member at Loma Linda University. She possesses a Doctor of Occupational Therapy degree with a dual emphasis in Hand Therapy and Administration/Practice Management. She also has a master's degree in Public Administration. Dr. Wietlisbach is past-president of the Occupational Therapy Association of California, and recently completed two terms as a Governor-Appointee to the California Board of Occupational Therapy.</td>
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<tr>
<td>Christina Wong, Licensed Clinical Social Worker</td>
<td>5/18/11</td>
<td>6/1/13</td>
<td>Governor</td>
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<td>Ms. Wong has been employed by Glenn County Health Services where she currently serves as Health Services Program Coordinator. She was formerly the Senior Mental Health Counselor for the Children’s System of Care Program. Ms. Wong is also a Mental Health Clinician for Butte County Probation Department’s Minor Adjustment Program, providing family counseling to the incarcerated minors in juvenile hall and upon release in the community since 2008. Ms. Wong is the Field Instructor for California State University, Chico, School of Social Work and previously served as the Dean of Student Affairs for Hong Kong Shue Yan College from 1993-1997.</td>
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<tr>
<td>Karen Pines, Licensed Marriage and Family Therapist</td>
<td>4/5/11</td>
<td>6/1/13</td>
<td>Governor</td>
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<td>Ms. Pines previously served as a member of the BBS from July 24, 1999 to July 31, 2006. She served three terms as the BBS's Chair and one term as the BBS's Vice Chair. Ms. Pines has also served as public member for the Physical Therapy Board and is an adjunct professor at Pepperdine University, Graduate School of Education and Psychology. She earned her Bachelor of Science in Journalism from Ohio University, with a minor in Education, and her Master of Education and Psychology from California State University, Northridge. Ms. Pines is certified as an Alcohol and Drug Abuse Counselor and Critical Incident Debriefing Specialist.</td>
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<td>Samara Ashley, public member</td>
<td>1/21/10</td>
<td>6/1/13</td>
<td>Governor</td>
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<tr>
<td>Ms. Ashley has served as director of government affairs for the Port of Long Beach since 2007. From 2004-2007, Ms. Ashley was an account executive for Cerrell Associates, district field representative for Senator Betty Karnette from 2002 to 2004 and social service director and case manager for California Care Center from 1999 to 2002. She is a member of the Harbor Association of Industry and Commerce, Women's Transportation Seminar and American Association of Port Authorities.</td>
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<tr>
<td>Patricia Lock-Dawson, public member</td>
<td>1/13/10</td>
<td>6/1/13</td>
<td>Governor</td>
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<tr>
<td>She has served the city of Riverside as planning commissioner since 2007 and director of the Santa Ana River Trail and Parkway Partnership for Riverside County Supervisor John Tavaglione since 2005. Additionally, Ms. Lock-Dawson has been principal of PLD Consulting since 2003. Previously, she worked for Riverside County's Executive Office as environmental programs advisor from 2000 to 2006. Ms. Lock-Dawson was an ecologist, ecosystem planner and a wildlife biologist for the U.S. Department of Interior's Bureau of Land Management and U.S. Geological Survey from 1994 to 2001 and state wetlands coordinator for the Utah Division of Wildlife Resources from 1992 to 1994. She is a member of the Riverside Land Conservancy Board of Governors, Raincross Group, and President of the Inland Empire Chapter of CA Women Lead.</td>
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<tr>
<td>Dr. Harry Douglas III, public member</td>
<td>5/14/09</td>
<td>6/1/15</td>
<td>Assembly Speaker</td>
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<td>Dr. Douglas has over 35 years of experience in the health and higher education fields. Dr. Douglas served in multiple administrative positions at Charles R. Drew University of Medicine and Science from 1983-2004,</td>
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including Interim President, Executive Vice President, and Vice President for Academic Affairs. Dr. Douglas’ professional interests have focused on creating healthcare systems that are responsive to minorities and other underserved populations, and he has organized model curricula around health promotion/disease prevention with a focus on disadvantaged populations. He also serves as a consultant on health and education policy issues for numerous public and private organizations.

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<thead>
<tr>
<th>Sarita Kohli, Licensed Marriage and Family Therapist</th>
<th>6/11/11</th>
<th>6/1/14</th>
<th>Governor</th>
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<tr>
<td>Ms. Kohli has been working in community mental health for over twelve years. Currently, she serves as Director of Mental Health Programs at Asian Americans for Community Involvement (AACI) in San Jose, overseeing outpatient Mental Health programs and the Center for Survivors of Torture. Ms. Kohli is in the Addressing Health Disparities Leadership Program of the National Council of Community Behavioral Health, a national leadership program for developing leaders from ethnically diverse communities. Previously, Ms. Kohli was on the Board of West Valley Community Services, a community services organization providing basic needs, family support and housing services. She serves on the Santa Clara County Social Services Advisory Commission and has been on the Executive Committee for the National Consortium of Torture Treatment Programs.</td>
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<tr>
<th>Renee Lonner, Licensed Clinical Social Worker</th>
<th>1/17/07</th>
<th>6/1/14</th>
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<tr>
<th>Dr. Julia “Judy” Johnson, Licensed Education Psychologist</th>
<th>8/24/05</th>
<th>6/1/12</th>
<th>Governor</th>
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<tr>
<td>Dr. Johnson, of Brea, has been in Private Practice for over 20 years assisting parents, community agencies, Universities, and school districts with educational planning. She is currently on faculty at the University of Redlands as a professor in the MA in Education/School Counseling Program. She has been a licensed educational psychologist with the Whittier Union High School District, serving as educational coordinator for counseling programs and supervisor for counseling interns at Pioneer High School, since 2004. Previously, Dr. Johnson was a part time professor in educational psychology and special education at California State Polytechnic University, San Luis Obispo. She is a member of the California Association of School Psychologists (CASP), the National Association of School Psychologists (NASP) and the American Board of School Neuropsychology and completed a Doctorate in Leadership for Educational Justice at the University of Redlands in 2011.</td>
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<tr>
<th>Vacant Position - LPCC (to be appointed after 1/1/12)</th>
<th>Governor</th>
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<tbody>
<tr>
<td>Vacant Positions - 3 Public Members</td>
<td>Governor</td>
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(For more detailed information regarding the responsibilities, operation, and functions of the Board please refer to the BBS 2011 Sunset Review Report)

**PRIOR SUNSET REVIEW:**

**CHANGES AND IMPROVEMENTS**

The BBS was last reviewed by the former Joint Committee on Boards, Commissions and Consumer Protection (Joint Committee) seven years ago (2004-2005). During the previous Sunset Review, the
Joint Committee raised four issues regarding the BBS. The following are actions which the BBS took since the last Sunset Review to address these issues. For those which were not addressed and which may still be of concern to the Committee, they are addressed and more fully discussed under “Current Sunset Review Issues.”

In November 2011, the BBS submitted its required Sunset Review Report to the Committee. In this report, the BBS described actions that have been taken since the BBBS’s prior review to address the recommendations of the JLSRC. The following are some of the more important programmatic and operational changes and enhancements which the BBS has taken and other important policy decisions or regulatory changes it has adopted, as well as some highlighted accomplishments:

- **Continued regulation of the profession by the BBS.** The recommendation was to continue regulation by the BBS.

- **Whether the Board should allow licensees to fulfill all 36 hours of Continuing Education (CE) through only self-study.** The Joint Committee pointed out that licensees may obtain all 36 hours of CE by visiting internet sites, accessed remotely from their home or other location, and that the licensee need only certify to the BBS that they have done this, without any further proof, and the BBS does not audit the licensee certifications. The Joint Committee raised two potential problems:
  1. A greater potential for licensees to abuse this method of fulfilling CE;
  2. In a profession so heavily dependent on human interaction, is it entirely appropriate that licensees be permitted to fulfill all of their CE requirements while alone?

  The BBS conducted a random survey of licensees who renewed their licenses between October 1, 2004, and April 1, 2005, and found that of the 554 responses, only two percent (2%) completed the entire required CE through online courses. The BBS concluded that the survey indicated that the Board’s licensees favor traditional, classroom style courses, but that online courses remain a useful alternative. According to BBS, the Board is currently in the process of reviewing its continuing education program.

- **Restitution – Whether the Board should have the authority to order restitution to consumers who have been seriously harmed by licensees.** The Joint Committee raised the issue of whether the Board’s authority should include the ability to request restitution in appropriate cases or in cases where there is reason to believe restitution would be substantial, or when such an award would serve the interest of justice in a particular case.

  BBS stated that it did not have specific legislative authority to require restitution for consumers, however it may consider seeking restitution when negotiating a stipulated agreement. Historically, BBS indicates that it has placed more importance on consumer safety and protection, and on imposing discipline that either helps correct the problem through probation monitoring and remedial education, supervised practice, etc., or in cases involving the most serious misconduct, removes the individual from the profession by revoking the license or registration held.

  According to BBS, the intangible nature of the services provided by Board licensees and registrants, makes it difficult if not impossible to determine the monetary value of those services. The BBS recognizes there are other avenues, such as civil or malpractice actions,
available to consumers who seek financial compensation from licensees who have provided services that are inappropriate or harmful.

- **Whether the public would benefit by being able to learn from the Board’s website of non-licensees who have been convicted of the unlicensed practice of psychology.** The Joint Committee recommended the BBS should work with the DCA to determine an appropriate and efficient way to post information about non-licensees who engage in unlicensed practice.

According to BBS, the current online license verification feature was programmed by the DCA’s Office of Information Services, and extracts public data from the BBS’s licensing records and enforcement actions from its enforcement tracking system, allowing the information to be accessed on the BBS website. The BBS states the program requires a license or registration number to be present, and does not have the ability to extract unlicensed records from the enforcement tracking system.

According to BBS, since 2004, the DCA and the Board have initiated educational campaigns urging consumers to verify a practitioner’s license prior to engaging in services. These efforts focus on the requirement of licensure for the service offered. The BBS believes the addition of information to the BBS’s website about individuals not licensed with the BBS would cause confusion.

- **Reorganization.** Since the last Sunset Review in 2004, the BBS restructured its organization to meet its operational needs more efficiently. Following an evaluation of the BBS’s operational needs and desire to improve efficiency, the BBS added a manager position in 2005 to provide oversight of the daily activities of all the BBS’s programs. This allowed the EO and AEO to primarily focus on policy decisions, changes in mental health affecting the BBS’s licensees and registrants, and implementing the direction of the board members.

A steady growth in licensees and registrants and the addition of the Licensed Professional Clinical Counselor program in 2011, resulted in a 38% increase in total staffing since 2005. Three separate units were created grouping similar or related activities together. The Licensing and Examination, Enforcement, and Administration units each are under the direction and supervision of a Staff Services Manager.

The composition of the BBS’s staffing since 2004 is noted in the chart below.

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<tr>
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<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
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<tr>
<td>Total Authorized Staff</td>
<td>32</td>
<td>31</td>
<td>33</td>
<td>35</td>
<td>39</td>
<td>38</td>
<td>44</td>
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<tr>
<td>Total Staff</td>
<td>29</td>
<td>28</td>
<td>30</td>
<td>30</td>
<td>34</td>
<td>33</td>
<td>39</td>
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<tr>
<td>Managers</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>3</td>
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<tr>
<td>AEO</td>
<td>1</td>
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<td>1</td>
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<tr>
<td>EO</td>
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- **Relocation.** In 2005 the BBS relocated from R Street in Sacramento to its current location at North Market Boulevard.
• **Change in Leadership.** Prior to 2010, the BBS consisted of eleven board members. The addition of the LPCC program increased the composition of the Board to twelve members in 2010 (by adding a public member), and to its current makeup of thirteen members by adding an LPCC to the Board. Since November 2004, the BBS has had two Executive Officers. The previous incumbent served from November 2004 to November 2009. The current Executive Officer, Kim Madsen, was appointed in January 2010.

• **Strategic Plan.** The BBS revised its Strategic Plan in 2007, adopting its current mission statement to protect Californians by promoting consumer awareness, advocating for improved mental health services, and setting, communicating, and enforcing standards. The Strategic Plan was updated in 2009 to further define the BBS’s goals with the inclusion of performance measures. In 2010, the Strategic Plan was revised to reflect the core functions of the BBS with the primary goal to become a model state agency and enhance consumer protection.

• **Legislation Sponsored by or Affecting the BBS.** A number of legislative changes relevant to the BBS’s duties have been enacted since the last Sunset Review in 2004. Some of the significant changes are listed below. For a comprehensive list of legislation affecting the BBS, see the 2011 Sunset Review Report.

SB 231 (Figueroa, Chapter 674, Statutes of 2005) required a LEP, MFT Intern, or ASW or their counsel to report to the BBS within 30 days any judgment, settlement, or arbitration award over $3,000, resulting from a claim or action for damages for death or personal injury, when the LEP or registrant does not possess professional liability insurance for that claim. Similarly, the bill also required an LMFT, LCSW, or their counsel to report to the BBS within 30 days such judgment, settlement, or awards over $10,000.

SB 33 (Correa, Chapter 26, Statutes of 2009), sponsored by the BBS, updated and recast the MFT educational curriculum requirements to require persons who begin graduate study after August 1, 2012, to meet increased total unit requirements, increased practicum hours for face-to-face counseling, integrated specified elements, including public mental health practices, throughout the curriculum, repealed current marriage and family therapist educational requirements on January 1, 2019, revised requirements for applicants licensed or educated outside of California, and made other conforming changes.

SB 788 (Wyland, Chapter 619, Statutes of 2009) established licensure and regulation for Licensed Professional Clinical Counselors, a new category of licensed mental health professionals. The bill established licensing requirements for LPCCs that are substantially equivalent to licensing standards for LMFTs and LCSWs, which are comparable professions that the BBS also regulates. This bill was sponsored by the California Coalition for Counselor Licensure.

SB 1172 (McLeod, Chapter 517, Statutes of 2010) required the BBS to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee’s probation.

AB 2699 (Bass, Chapter 270, Statutes of 2010) allowed a health care practitioner licensed in another state to provide health care in California by meeting specified conditions and if the
services provided meet the following conditions:

- Care is in association with health fair which has a sponsoring entity that registers with the healing arts board, pays a registration fee, and provides specified information to the county health department where the health care services will be provided.
- Care is on a short-term, voluntary basis.
- Care is to uninsured or underinsured persons.
- Care is without charge to the recipient or to a third party on behalf of the recipient.

SB 274 (Wyland, Chapter 148, Statutes of 2011), an urgency measure which became effective immediately, extend the grandparenting period for those seeking licensure as a LPCC, as the original grandparenting period expired before the Board was able to accept applications. The bill also clarified various provisions regarding the LPCC practice.

SB 704 (Negrete McLeod, Chapter 387, Statutes of 2011) restructured the examination process for licensure as an LMFT, LPCC, and LCSW. The bill required applicants for licensure to pass two new exams; a California law and ethics examination and a clinical examination. The new exams replaced the prior standard written and clinical vignette exams.

- **Regulations Adopted by the BBS.** A number of regulatory changes have been adopted by BBS since the last Sunset Review in 2004. Some of the significant regulatory changes are listed below. For a comprehensive list of regulatory changes, see the 2011 Sunset Review Report.

  **Citations and Fines:** Effective September 2006, the regulations increased the maximum fine from $2,500 to $5,000 for specified violations under the Board’s citation and fine program for LMFTs, LCSWs, LEPs, and Board registrants.

  **Delegation of Authority:** These April 2007 regulatory changes delegated certain functions by the BBS to the executive officer. Specifically, the regulations allowed the executive officer to sign orders to compel a psychiatric evaluation of a BBS licensee or registrant as part of an investigation of a complaint.

  **Fingerprint Submission:** In June 2009, regulatory changes required all licensees who had not previously submitted fingerprints to the Department of Justice (DOJ) to complete a state and federal level criminal offender record information search through the DOJ before renewal of their licenses. This regulation further allowed the BBS to take disciplinary action and assess a fine not to exceed $5,000 for failing to submit fingerprints.

  **Disciplinary Guidelines Revision:** Effective July 2009, the BBS updated its Disciplinary Guidelines. Disciplinary Guidelines are utilized in a disciplinary action against a licensee under the Administrative Procedures Act.

- **Pending Regulations.** In its Report, the BBS identified a number of proposed regulations that are currently being considered by the Board. Some of the more significant pending regulatory changes are listed below. A comprehensive list of pending regulations may be found in the 2011 Sunset Review Report.
SB 1111 Enforcement Regulations: This proposal is part of an effort by the DCA to allow healing arts boards to individually seek regulations to implement the provisions found in SB 1111 (Negrete McLeod, 2010) and SB 544 (Price, 2012) as part of the DCA’s Consumer Protection Enforcement Initiative that do not require statutory authority. These regulations propose delegation of certain functions to the executive officer, require actions against registered sex offenders, and additional unprofessional conduct provisions to aid in the enforcement streamlining effort. This proposal was approved by the Board at its meeting on August 18, 2011. This rulemaking was submitted to OAL for initial notice in 2011.

Examination Restructure: The regulation makes changes needed due to the restructuring of the Board’s examination process for LMFTs, LCSWs, and LPCCs by SB 704 (identified above). The regulatory proposal also makes changes to be consistent with SB 274 (Chapter 148, Statutes of 2011), which deleted the annual license renewal requirement for LPCCs who obtained a license through the grandparenting process. This proposal was considered at the November 9, 2011 Board meeting.

SB 1441 Enforcement Regulations: This regulatory proposal is a result of SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008), which required DCA to establish the Substance Abuse Coordination Committee (SACC). The SACC, comprised of the Executive Officers of the DCA’s healing arts boards, was tasked with formulating uniform and specific standards in specified areas that each board would be required to use in dealing with substance abusing licensees. The goal of this process was to create consistent and uniform standards that healing arts boards would adopt through regulation, providing consumers more consistent protection from substance abusing licensees. This proposal was considered at the November 9, 2011 Board meeting.

Enforcement Regulations: This proposal makes changes to the Disciplinary Guidelines, including technical changes due to statutory amendments, and procedural changes to the standard and optional terms and conditions of probation. This proposal was considered at the November 9, 2011 Board meeting.

Exemptions for Sponsored Free Health Care Events: As a result of AB 2699 (Bass, Chapter 270, Statutes of 2010), beginning January 1, 2011, health care practitioners licensed or certified in good standing in another state may be temporarily exempted from California licensing requirements under certain conditions. However, before this law can be implemented, regulations must be approved by each healing arts board under DCA which specify the methods of implementation. DCA has drafted a model regulation package for each of its healing arts boards to use as a standardized framework and is currently in the process of making revisions to this framework. Staff brought this proposal to the Board for consideration at the meeting tentatively scheduled for February 2012.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to the BBS, or those which were not previously addressed by the BBS, and other areas of concern for the BBS to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other
interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of the Committee staff.

STRATEGIC PLAN

**Background:** The Board’s 2007 Strategic Plan was updated in 2009. This revision further defined the Board’s goals with the inclusion of performance measures. In 2010, the Strategic Plan was revised to reflect the core functions of the Board with the primary goal to become a model state agency and enhance consumer protection.

Considering the Strategic Plan has not been updated since 2010, a review of the Strategic Plan and an update may be warranted. The BBS should review if there have been any impediments to pursuing the goals set forth in the Strategic Plan, ascertain if the goals are currently relevant and make adjustments to the plan in order to guarantee that the goals are achievable.

**Staff Recommendation:** The BBS should advise the Committee of the current status of their Strategic Plan and whether there should be an update of the Strategic Plan.

PENDING REGULATIONS

**Background:** The BBS has reviewed and implemented a number of rulemaking changes since the previous sunset review. The five regulatory packages noted above were “pending” at the time the Sunset Report was submitted with the notation that one regulation was submitted to OAL for initial notice by the end of 2011, three would be reviewed at the November 2011 Board meeting, and another would be reviewed at the February 2012 meeting.

Among these proposals, the regulatory changes to implement SB 1441 (scheduled for review by BBS in November 2011) and AB 2699 (scheduled for review by BBS in February 2012) have been identified as critical items for the BBS to update the Committee about.

**Senate Bill 1441 Enforcement Regulations** adopts specific standards for use in dealing with substance abusing licensees. The goal is to create consistent and uniform standards, providing consumers more consistent protection from substance abusing licensees.

**Exemptions for Sponsored Free Health Care Events.** As a result of AB 2699 (Bass, Chapter 270, Statutes of 2010), beginning January 1, 2011, health care practitioners licensed or certified in good standing in another state may be temporarily exempted from California licensing requirements under certain conditions. However, before this law can be implemented, regulations must be approved by each healing arts board under DCA which specify the methods of implementation.
Staff Recommendation: The BBS should inform the Committee of the current status of their implementation of the law. Specifically, what actions has the BBS taken to implement the 5 “pending” regulations including the regulations which would implement SB 1441 and AB 2699?

LICENSING

Background: Effective January 1, 2010, a fourth mental health profession, Licensed Professional Clinical Counselor, was added to the Board’s jurisdiction. Today, the Board is responsible for the regulatory oversight of nearly 77,000 licensees. Current law provides for twelve board members; five licensees and seven public members. Ten members are appointed by the Governor, one public member is appointed by the Speaker of the Assembly, and one public member is appointed by the Senate Rules Committee. In 2012, a LPCC member appointed by the Governor will be added, increasing the board composition to thirteen members.

Considering that the LPCC is the newest license category, the Committee desires to know if the Board has fully implemented this new licensing category. What is the current status of training programs for LPCC candidates? What is the current status of newly licensed Professional Clinical Counselors? Have there been any challenges in this process? Is any legislation needed to assist the Board in overseeing the training and/or licensing process for LPCCs?

Staff Recommendation: The BBS should provide an update to the Committee on the current status of the LPCC category including information about training programs, licensed LPCCs and any challenges to implementing this new license category. The BBS should also indicate if any legislation needs to be proposed in order to help the BBS more effectively oversee this facet of the profession and serve the professional interests of licensees.

Background: In 2011, the Board voted to use the National Clinical Mental Health Counseling Examination (NCMHCE) in order to license LPCCs in California. The examination is developed and administered by the National Board for Certified Counselors (NBCC) which is located in North Carolina.

The Board conducted an assessment of the NCMHCE. The purpose of the assessment was to ensure the examination met professional guidelines and technical standards outlined in the Standards for Educational and Psychological Testing and the Department of Consumer Affairs Examination Validation Policy. The Board’s assessment determined the examination meets the prevailing standards for validation and use of the examination for licensure in California.

Considering that the adoption of the NBCC for licensing LPCCs is a new procedure, the Committee desires to know how this change has or will affect prospective licensees. Has the BBS fully adopted use of the NBCC with its prospective licensees? What is the current status of this process? Have there been any challenges in switching to the NBCC Examination?
Staff Recommendation: The BBS should provide an update to the Committee on the current status of the use of the NBCC licensing examination for LPCCs.

Background: BBS reviews all licensure applications for previous criminal convictions and/or disciplinary actions against a professional license. Applicants are required to declare, under penalty of perjury, whether they have ever been convicted of, pled guilty to or pled nolo contendere to, any misdemeanor or felony. Applicants must also declare, under penalty of perjury, whether they have been denied a professional license or had license privileges suspended, revoked, or disciplined, or if they have ever voluntarily surrendered a professional license in California or other state.

If an applicant reports such an act, the Board requires the applicant to provide a written explanation, documents relating to the conviction or disciplinary action, and rehabilitative efforts or changes made to prevent future occurrences.

The Board uses a variety of methods to determine the accuracy of an applicant’s declarations. For criminal conviction history, California law authorizes the BBS to conduct criminal record background checks to help determine the eligibility of a person applying for a license or registration. The BBS requires all applicants to submit fingerprints through the Department of Justice (DOJ), who then provides the BBS's authorized personnel with access to information contained in the DOJ's criminal offender record information database (CORI). The BBS requires both a DOJ and Federal Bureau of Investigation (FBI) criminal history background check on all applicants for licensure or registration. If an applicant has a criminal history, the DOJ will notify the BBS of results in approximately 14 to 30 days.

To determine if an applicant has had prior disciplinary history, the BBS can verify out-of-state licensure status through other state regulatory boards and by conducting a query through the Healthcare Integrity and Protection Data Bank. For verification of in-state licensure status, the BBS can check for prior disciplinary actions through the Commission on Teacher Credentialing and the Consumer Affairs System (CAS).

Though the process for checking the background of an applicant who has been trained or practiced within the state of California seems to be thorough, the Committee is concerned about the steps taken to fully check the background of an applicant who has previously practiced outside of the state. For example, in the most recent Sunset Report, BBS indicated that they do not currently utilize a national data bank to retrieve information about prospective licensees.

The Committee is concerned with the protection of the public and the effective operation of the profession. As such, it is imperative that steps be taken to thoroughly examine a potential licensee’s professional background and criminal history.

Staff Recommendation: The BBS should provide rationale to explain why they do not utilize a national data bank to check the background of applicants for licensure.
ISSUE # 6: Why is the BBS not meeting its performance targets?

**Background:** While in FY 2008/2009 the licensing and cashiering staff was able to meet the performance standards, the combination of the existing vacancies and increase in workload have significantly increased the BBS’s processing times.

At the present time, the BBS is not meeting these performance targets due to vacancies over the last year in both the licensing and the cashiering units. Many of the duties within the licensing and cashiering units are assigned to one or two staff members to process the workload. Any vacancies in these areas have an immediate and adverse effect on processing times. Moreover, the overall application volumes have increased 13% in the last three years. In order to maintain a continual workload in both the licensing and cashiering units, the BBS staff in other units have been cross-trained to assist in the preparation of all applications received by the Board. This allows the remaining staff in the licensing and cashiering units to process applications more expeditiously.

The Committee understands that vacancies in the licensing and cashier unit have impacted the processing time for licenses. However, it would be helpful to provide data reflecting what the current licensing timeframes are. What is the plan to rectify this issue?

**Staff Recommendation:** The BBS should provide updated data reflecting the current timeframe for issuing licenses and outline a plan to meet the performance targets outlined by the BBS.

**CONTINUING EDUCATION**

**Background:** The BBS requires each licensee to complete 36 hours of continuing education (CE) every two years, in or relevant to, the licensee’s field of practice in order renew the license. CE courses must be obtained from either:

- An accredited or state-approved school;
- A professional association, licensed health facility, governmental entity, educational institution, individual, or other organization approved by the BBS.

CE course content must be applicable to the practice of the particular profession, must be related to direct or indirect patient care and must incorporate one or more of the following elements related to the licensed discipline:

- Elements fundamental to the understanding and practice of the profession.
- Elements in which significant recent developments have occurred.
- Elements of other disciplines that enhance the understanding or the practice of the discipline of the licensee.

BBS regulations outline the requirements for CE Provider (Provider) approval by the Board. In order to be approved by the Board, a Provider must meet the Board’s course content and instructor qualification. Provider approval must be renewed every two years. A Provider must apply for renewal by submitting the appropriate form and paying the required $200 fee. A Provider with an expired
Current law outlines broad course content requirements for CE courses, and requires the Provider to ensure that course content and instructor qualifications criteria are met. The BBS may revoke or deny a provider application for good cause, including: a criminal conviction, failure to comply with the licensing law, or making a misrepresentation of fact in information submitted to the BBS.

Though the BBS does not have explicit authority to review course content, the Board may audit provider records to ensure compliance with the CE requirements, including the requirement that a Provider ensure that the course content and instructors teaching courses meet the specified criteria. The law gives the Board authority to revoke or deny a Provider based on not ensuring quality of content, however, it does not allow the Board to approve or deny specific courses offered by a Provider. Language expressly permitting the review of course content and instructor qualification relates only to an initial Provider approval application. This review of coursework content and instructor qualification does not extend to renewal or maintenance of a Provider’s approval.

A recent case illustrates need for the BBS to review its process for approving CE Providers, and make appropriate changes to its procedures, or recommend legislative changes to its CE requirements. In July of 2011, the BBS began receiving complaints from the public regarding the BBS approved CE Provider, the National Association of Research and Therapy of Homosexuality (NARTH). The BBS received hundreds of emails from individuals protesting the approval of an organization that offers “reparative” or “conversion” therapy for individuals that have unwanted homosexual tendencies. NARTH was approved by the Board as a CE Provider in 1998. As of November 1, 2010 NARTH had not renewed its Provider Approval and is currently unable to provide CE courses to the BBS licensees for credit. Since that time NARTH’s approval remained expired for more than one year and can no longer be renewed, and has been cancelled by the BBS. In order to become a CE Provider, NARTH would have to apply for a new Provider authorization from the BBS.

One of the primary factors in this issue is that NARTH has advocated the use of “reparative” or “conversion” therapy. Conversion therapy (also called reparative therapy or reorientation therapy) is a type of sexual orientation change effort that attempts to change the sexual orientation of a person from homosexual or bisexual to heterosexual. The American Psychological Association defines conversion therapy as “therapy aimed at changing sexual orientation.” The American Psychiatric Association states that conversion therapy is a type of psychiatric treatment “based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that a patient should change his/her sexual homosexual orientation.” Both the American Psychiatric Association and the American Psychological Association have rejected the concept of conversion therapy for therapists.

However, the approval of an organization advocating conversion therapy, such as NARTH, by the BBS drew the attention of the public and a number of legislators. Since that time, BBS staff has met with legislative staff to discuss the provider approval process and deficiencies in the process. Concern has been expressed over the approval of NARTH and the provider approval process.
The BBS states in its November Sunset Report that at its October 13, 2011, Policy and Advocacy Committee (BBS-PAC) meeting, committee members discussed needed changes to the regulations that set forth requirements for Providers. Additionally, BBS-PAC members discussed the possible need to transition to a continuing competency model for licensure renewal. The BBS-PAC recommended that the BBS create a Continuing Education sub-committee to conduct meetings with stakeholders, professional associations, and experts in continuing competence programs to determine the best possible solutions in moving forward with a restructure of the continuing education program.

**Staff Recommendation:** Even though the BBS has assured that NARTH has been removed from the list of approved CE Providers, and would have to apply for a new initial approval in order to become a CE Provider, the BBS should assure that it has sufficient authority to review the course content of both initial and renewal provider applications, and to deny the approval or renewal of those applicants who offer courses which teach inappropriate methods or practices. The BBS should report to the Committee its current assessment of changes that may need to be made to the requirements for CE Providers, and advise the Committee on any legislative changes that should be made. The BBS should further work with the stakeholders in the profession and in the Legislature to make the appropriate procedural, regulatory or legislative changes to its CE program.

**STAFFING**

**Background:** Historically, the BBS has had very little staff turnover. Currently, the BBS has authorization for 43.3 staff positions and 3.3 blanket positions. The Governor’s Hiring Freeze (Executive Order B-3-11) and the past Executive Orders for the Furlough Programs were adversely impacted the Board’s recruitment efforts and operations. The BBS currently has eight vacancies and has initiated recruitment efforts to fill the following positions: 1 Staff Services Manager I, 1 Special Investigator, 1 Associate Governmental Program Analyst, and 5 Office Technicians. Recruitment efforts were not successful under the recent hiring freeze constraints. The majority of the vacancies are in the BBS’s licensing and cashiering unit. The time of the year when the BBS sees an increase in the application volume has recently passed. Consequently, as a result of the ongoing vacancies, the BBS’s processing times increased.

The BBS was legislatively mandated to license and regulate a new mental health profession, Licensed Professional Clinical Counselor, established by Senate Bill 788 (Chapter 619, Statutes of 2009), starting January 1, 2010. The Board staff faced challenges implementing this new licensing program with the existing vacancies and significant delays in filling positions specifically created for the LPCC licensing program.

The Committee understands the impact that the recent hiring freeze has had on the BBS. However, it would be helpful to explain to the Committee why so many vacancies exist. Has a survey of departing staff been conducted to ascertain why they left? What are the efforts to fix the problems that led to the vacancies? What are the plans to hire new staff and what are the impediments to accomplishing this task?

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**Staff Recommendation:** The BBS should report the current status of vacancies and newly hired staff to the Committee. The BBS should review the nature of the remaining vacancies and report to the Committee its plan to fill the vacancies.

**Background:** The BBS began using a customer satisfaction survey in April 2008. However, the overall satisfaction rating with the services provided by Board staff has declined over the last three fiscal years. The BBS attributes this to existing vacancies in the licensing and cashiering unit. The BBS also states that it is continuing its efforts to improve communication to ensure important and relevant information is provided timely and efficiently.

It would be helpful to explain why there are vacancies in the licensing and cashiering unit. What are the efforts to hire new staff and what are the impediments to accomplishing this task? What changes does the BBS plan to implement in order to improve customer satisfaction—particularly as it relates to the customer’s interactions with staff members and their interface with the Website.

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**Staff Recommendation:** The BBS should review the nature of the vacancies in the licensing and cashiering unit and report to the Committee its efforts to hire staff. The BBS should outline the plan to improve customer satisfaction with staff and with the Website in the interim. The BBS
should also provide suggestions about how the Committee might assist the BBS in operating at its full capacity thereby providing good customer service.

ENFORCEMENT

Background: Per the Sunset Review report, the BBS’s enforcement workload has increased 210% since the 2004 Sunset Review. The enforcement data for FY 2010/2011 reflects the highest number of consumer complaints and conviction/arrest reports ever received by the Board, with a total of 1,981 cases. By comparison, in its 2004 Sunset Review, the BBS reported receiving 943 total cases.

The rise in consumer complaints can be attributed to the ability of consumers to file a complaint online through the BBS’s Website, the increased number of licensees and registrants, and consumer education. The increase in conviction/arrest reports are related to a new regulation, 16 CCR Section 1815, which requires all licensees and registrants to submit fingerprints; effective June 19, 2009. Over 34,000 licensees were identified by the BBS as needing to comply with this requirement and were notified by the BBS of this new requirement.

The increasing enforcement workload requires the BBS to assess its resources and review its processes. Through the BCP process, additional staffing resources were requested and received. One significant change to the BBS’s process is the addition of two non-sworn Investigative Analysts.

These analysts perform a majority of the BBS’s field investigative work that was previously referred to the DCA, Division of Investigation (DOI). On April 1, 2010, a report submitted to the legislature related to the work of non-sworn Investigative Analysts noted significant improvements in investigation timelines.

The BBS completed a comprehensive review of its enforcement program in 2010. The review included all procedural steps from receipt of the complaint to closure. Many duplicative and obsolete processes were identified and eliminated.

Considering the very high increases in consumer complaints and the increased workload, it is important to advise the Committee about the results of the 2010 review of the enforcement program and plans for improved enforcement of the profession.

Staff Recommendation: The BBS should detail the steps involved in reviewing the enforcement program and advise the Committee of the “duplicative and obsolete” processes that were eliminated. Have the changes made as a result of the enforcement program review resulted in any positive outcomes e.g. decreased work load and/or decreased consumer complaints? Also, what is the BBS’s plan for continuing to handle the increased workload?
**BUDGET**

**Background:** The BBS ended FY 2010/2011 with a reserve balance of $448,700, which equates to 6.9 months in reserve. The Board estimates FY 2011/2012 reserve balance to be approximately $120,900, equaling 1.7 months in reserve. The drastic decrease is a direct result of the $3.3 million loan to the General Fund in FY 2011/2012, revenue lost as a result of implementing a retired license status (Assembly Bill 2191, Chapter 548, Statutes of 2010), and the Departmental BreEZe Budget Change Proposal.

In FY 2010/2011, the BBS reverted $1,063,586, due to spending $6,927,523 of its $7,991,109 budget.

Considering the staffing vacancies, and the impact on existing staff and on customer satisfaction, it is important that the BBS inform the Committee about the reasons that the BBS is not spending all funds it is authorized to spend.

**Staff Recommendation:** The BBS should provide the Committee with an explanation of why the Board is not spending all funds under its authority.

**ISSUE # 12: Loans to the General Fund.**

**Background:** Since FY2002/2003 the BBS has made a total of three loans to the General Fund; $6 million in FY2002/2003, $3 million in FY2008/2009, and $3.3 million in FY2011/2012. To date, the BBS has not received any repayment. The total loan balance remains at $12.3 million.

**Staff Recommendation:** The Committee requests that the BBS provide an update about the status of the loans and when the funds are projected to be returned. Has the BBS received any report from the Department of Finance regarding the repayment of the loans?

**USE OF TECHNOLOGY**

**Background:** In 2010 two BBS committee meetings were available via webcast.

The Committee is concerned about the BBS’s lack of use of technology in order to make the content of the BBS meetings more available to the public. Webcasting is an important tool that can allow for remote members of the public and/or those who are disabled to stay apprised of the activities of the Board as well as well as trends in the professions.

**Staff Recommendation:** The BBS should utilize webcasting at future Board meetings in order to allow the public the best access to meeting content and to stay apprised of the activities of the BBS and trends in the professions.
ISSUE # 14: What is the status of BReEZe implementation?

**Background:** BReEZe is an important opportunity to improve BBS operations to include electronic payments and expedite processing. The Board staff have actively participated with the BReEZe project.

The Board’s Staff Information Systems Analyst is designated as a Subject Matter Expert for the project. Other Board staff members with extensive knowledge regarding the licensing, examination, cashiering and enforcement processes participated in workgroups providing their expertise regarding the BBS’s business processes. Additionally, several Board staff members were assigned to participate in the workgroups to standardize forms, reports, and correspondences.

The BBS is scheduled to begin using BReEZe in the Summer of 2012. It would be helpful to update the Committee about the Board’s current work to implement the BReEZe project.

**Staff Recommendation:** The BBS should update the Committee about the current status of their implementation of BReEZe. What have the challenges of implementing the system been? What are the costs of implementing this system? Is the cost of BReEZe consistent with what the BBS was told the project would cost?

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**Continued Regulation of the Profession by the Current Members of the BBS**

**Background:** The health and safety of consumers is protected by well-regulated professions. The BBS is charged with protecting the consumer from unprofessional and unsafe licensees. It appears as if the BBS has been an effective and for the most part an efficient regulatory body for the professions that fall under its purview. Therefore, the BBS should be granted a four-year extension of its sunset date.

**Recommendation:** Recommend that the LCSW, LMFT, LEP and LPCC professions and registration of ASW, MFT Interns, PCC Interns and Continuing Education Providers continue to be regulated by the current the BBS in order to protect the interests of consumers and be reviewed once again in four years.
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April 19, 2012

Le Ondra Clark, PH.D.
Senate Business, Professions and Economic Development Committee
State Capitol
Sacramento, CA  95814

Dear Dr. Clark,

This is in response to the Senate Business, Professions and Economic Development Committee (Committee) request to provide a written response to the Issues and Recommendations raised in the Committee’s Background Paper prepared for the Oversight Hearing held on March 19, 2012. I will address the issues in the order presented in the Background Paper.

**ISSUE # 1: What is the status of the strategic plan?**

**Committee Comments:** The BBS should advise the Committee of the current status of their Strategic Plan and whether there should be an update of the Strategic Plan.

**Board Response:** The Board anticipates revising its Strategic Plain beginning in January 2013.

**ISSUE # 2: What is the status of pending regulations?**

**Committee Comments:** The BBS should inform the Committee of the current status of their implementation of the law. Specifically, what actions has the BBS taken to implement the 5 “pending” regulations including the regulations which would implement SB 1441 and AB 2699?

**Board Response:**

- Enforcement Regulations (Senate Bill 1111 - Negrete McLeod) – This regulation package was noticed on March 16, 2012.
- Examination Restructure Regulations (Senate Bill 704- Negrete McLeod) - This proposal was approved by the Board at its meeting on November 9, 2011 and will be submitted to OAL for initial notice in spring 2012.
- Regulations to Implement Senate Bill 363 (Emmerson) - This proposal was approved by Board at its meeting on November 9, 2011 and will be submitted to OAL for initial notice in summer 2012.
- Enforcement Regulations (Disciplinary Guidelines) - This proposal was approved by the Board at its meeting on November 9, 2011. Additional amendments will be presented at the April 19, 2012, Policy and Advocacy Meeting.
The following pending regulation proposals will be submitted to OAL as one regulation package in summer 2012.

- Title 16, CCR Section 1887.3, HIV/AIDS Continuing Education Course for Licensed Professional Clinical Counselors (LPCC).
- Title 16, CCR Section 1811, Revision of Advertising Regulations.
- Title 16, CCR Sections 1870, 1874, Two-Year Practice Requirement for Supervisors of Associate Social Workers (ASWs)

The Board is working with the Department of Consumer Affairs on some technical issues related to the following regulation proposals.

- Senate Bill 1441 (Ridley-Thomas) Enforcement Regulations
- Exemptions for Sponsored Free Health Care Events (Assembly Bill 2699 Bass)

**ISSUE # 3: New license category**

**Committee Comments:** The BBS should provide an update to the Committee on the current status of the LPCC category including information about training programs, licensed LPCCs and any challenges to implementing this new license category. The BBS should also indicate if any legislation needs to be proposed in order to help the BBS more effectively oversee this facet of the profession and serve the professional interests of licensees.

**Board Response:** The Board is pleased to report that the Licensed Professional Clinical Counselor (LPCC) program is implemented. The Board anticipated that the implementation of the LPCC program would be extremely challenging. One of the significant challenges for the Board was insufficient resources to do the work associated with establishing a new licensing program.

The Board’s resource request was supported by the Department of Finance. However, during the budget hearing process, the Board’s request for twelve positions was reduced to five. Faced with limited resources, a fifteen month timeline to implement the program, and hiring constraints, establishing this new licensing program was accomplished by the extraordinary efforts of the existing Board staff.

The application review process is underway and exam candidates are entering the examination process. The examination process includes Board developed examinations and a national examination. As of April 1, 2012, there are 11 Professional Clinical Counselor Interns and 11 Licensed Professional Clinical Counselors.

The Board has been successful in obtaining authors for legislative changes needed to implement the LPCC program and ensure that it runs smoothly. No additional legislative changes related to the LPCC program have been identified at this time.

**ISSUE # 4: What is the current status of the NBCC process?**

**Committee Comments:** The BBS should provide an update to the Committee on the current status of the use of the NBCC licensing examination for LPCCs.
Board Response: To date, 87 applicants are approved to take National Clinical Mental Health Counselor Examination offered by NBCC. The examination is offered during the first two weeks of each month. The Board provides NBCC with a list of candidates eligible for the examination. These candidates must contact NBCC to schedule their examination. Examination results are received on a monthly basis.

ISSUE # 5: Should the BBS use a national data bank to check the background of applicants for licensure?

Committee Comments: The BBS should provide rationale to explain why they do not utilize a national data bank to check the background of applicants for licensure.

Board Response: The Board is interested in using this additional tool and is exploring options to best incorporate its use in our current process.

The information maintained in the national data bank is designed to augment other sources of verification of a professional license. The accuracy, completeness, and timeliness of the information are dependent upon states and other reporters fulfilling their statutory duty to report. A fee is required to access this information.

Currently, the Board requires a criminal clearance from the California Department of Justice and the Federal Bureau of Investigation. Additionally, if an applicant is licensed in another state, the Board may access that state board’s website to determine the applicant’s licensure status.

ISSUE # 6: Why is the BBS not meeting its performance targets?

Committee Comments: The BBS should provide updated data reflecting the current timeframe for issuing licenses and outline a plan to meet the performance targets outlined by the BBS.

Board Response: As of January 1, 2012, the Board is fully staffed in both the licensing and cashiering units. This is the first time since June 2010 that both units are fully staffed. As a result, many of the delays applicants and licensees experienced during 2010 and 2011 no longer exist.

The Cashiering Unit is currently meeting its performance targets. Applications are processed within three days and renewal applications are processed within 7 days.

There is additional work to be done to meet the Board’s current performance targets in the Licensing Unit. To this end, the Board has initiated the following actions.

- Recruitment for an additional staff member in the LPCC licensing unit.
- Reassigned one licensing member to assist with the evaluation of LMFT examination applications.
- Reassigned one cashier to perform some of the less complex tasks associated with the evaluation of LMFT examination applications.

The Board anticipates that with these additional efforts the remaining delays within the Licensing Unit will decrease significantly.
**ISSUE # 7: Does the BBS have adequate authority to oversee the course content of continuing education providers?**

Committee Recommendation: Even though the BBS has assured that NARTH has been removed from the list of approved CE Providers, and would have to apply for a new initial approval in order to become a CE Provider, the BBS should assure that it has sufficient authority to review the course content of both initial and renewal provider applications, and to deny the approval or renewal of those applicants who offer courses which teach inappropriate methods or practices. The BBS should report to the Committee its current assessment of changes that may need to be made to the requirements for CE Providers, and advise the Committee on any legislative changes that should be made. The BBS should further work with the stakeholders in the profession and in the Legislature to make the appropriate procedural, regulatory or legislative changes to its CE program.

Board Response: The Board recognizes the limitations associated with its current continuing education program. The Board desires the opportunity to work with its stakeholders in a deliberative process to arrive at a solution that is beneficial to consumers and licensees, and meets the legislative intent of continuing education for mental health professionals.

At the November 2011 Board meeting a two person sub-committee was established to conduct a comprehensive review of the Board’s continuing education program. The Committee’s work will focus on assessing the Board’s current continuing education provider requirements and various continuing education and accreditation models throughout the state and country.

Throughout this process stakeholders and interested parties will be given an opportunity to provide input, feedback, and express their concerns regarding continuing education content, continuing education providers, and on proposed regulatory changes. The first public meeting was held on April 18, 2012. Subsequent meetings will be held on May 31, 2012 and July 19, 2012. The Committee plans to meet in September 2012; however, the date is to be determined. All of the meetings will be held in Sacramento. All meeting materials will be available on the Board’s website.

**ISSUE # 8: Why is the staff turnover rate so high?**

Committee Recommendation: The BBS should report the current status of vacancies and newly hired staff to the Committee. The BBS should review the nature of the remaining vacancies and report to the Committee its plan to fill the vacancies.

Board Response: Since June 2010, the Board experienced a vacancy rate that ranged from 20% to 30%. Unfortunately, the hiring freeze impacted the Board’s ability to fill all of these positions, which accounts for the high vacancy rate.

Some of the vacancies were a result of new positions the Board received through the Budget Change Proposal process. The remaining vacancies were due to prior incumbents departing due to the high work load as a result of existing vacancies or for promotional opportunities.

The Board is pleased to report that effective January 1, 2012, 42 of its 44 positions are filled. Although two vacancies remain, interviews have been conducted and the Board is awaiting the required approvals to extend a formal job offer.
ISSUE # 9: What accounts for the decline in consumer satisfaction?

Committee Recommendation: The BBS should review the nature of the vacancies in the licensing and cashiering unit and report to the Committee its efforts to hire staff. The BBS should outline the plan to improve customer satisfaction with staff and with the Website in the interim. The BBS should also provide suggestions about how the Committee might assist the BBS in operating at its full capacity thereby providing good customer service.

Board Response: At the February 2012 Board meeting, the fourth quarter consumer satisfaction survey results were reported. The fourth quarter reflects an improvement in overall satisfaction and accessibility. The successful service rating dropped from the third quarter but is higher than last year’s rating. The first two months of 2012 continue to reflect improved satisfaction with the Board’s service. The Board attributes the improvement to its ability to fill its existing vacancies.

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The Board continuously updates its website with the latest information and updates in order to ensure that consumers, applicants, and licensees have access to the information they need. Interested parties may sign up for a subscriber list serve which will notify them of new updates posted to the website.

ISSUE # 10: How has the BBS addressed the increase in enforcement workload since its last review?

Committee Recommendation: The BBS should detail the steps involved in reviewing the enforcement program and advise the Committee of the “duplicative and obsolete” processes that were eliminated. Have the changes made as a result of the enforcement program review resulted in any positive outcomes e.g. decreased workload and/or decreased consumer complaints? Also, what is the BBS’s plan for continuing to handle the increased workload?

Board Response: Through a series of meetings with the Enforcement Unit in 2010, the Board identified areas for improvement. For example, the Board eliminated procedural steps such as duplicate data entry. This process improvement allowed the Board to streamline the complaint intake process. Additionally, the review of non-jurisdictional cases was revised to eliminate multiple individuals reviewing the same information prior to closing the case. These cases are now forwarded directly to the Enforcement Manager for disposition.

The review of the Board’s enforcement process is ongoing. The Board continually seeks to find areas for improvement and to increase efficiency. The Board believes these efforts will help to address the increasing workload.
**ISSUE # 11: Why is the BBS under-spending?**

**Committee Recommendation:** The BBS should provide the Committee with an explanation of why the Board is not spending all funds under its authority.

**Board Response:** The under-spending of the Board’s funds is due to Executive Orders to reduce spending, furloughs, and the hiring freeze. The Board believes these circumstances are unique and the under-spending is a onetime occurrence.

**ISSUE # 12: Loans to the General Fund.**

**Committee Recommendation:** The Committee requests that the BBS provide an update about the status of the loans and when the funds are projected to be returned. Has the BBS received any report from the Department of Finance regarding the repayment of the loans?

**Board Response:** Currently the Board has a $12.3 million dollar loan to the General Fund. The Board has been advised that a $2 million repayment is proposed for budget year 2012/2013.

**ISSUE # 13: Webcasting meetings.**

**Committee Recommendation:** The BBS should utilize webcasting at future Board meetings in order to allow the public the best access to meeting content and to stay apprised of the activities of the BBS and trends in the professions.

**Board Response:** The Board concurs with the staff recommendation and plans to webcast future meetings. The Board webcasted its February 29 – March 1, 2012 Board meeting.

**ISSUE # 14: What is the status of BReEZe implementation?**

**Committee Recommendation:** The BBS should update the Committee about the current status of their implementation of BreEZe. What have the challenges of implementing the system been? What are the costs of implementing this system? Is the cost of BreEZe consistent with what the BBS was told the project would cost?

**Board Response:** The Board is in Phase I which is scheduled to “go live” in late summer 2012. The Board continues to work with the BreEZe team and the vendor to configure a system that will meet the Board’s needs and processes.

The Board’s costs were calculated on its existing system requirements and licensing base. However, recent legislation that revises the Board’s licensure examination process has required the Board to seek modifications to its existing system. These modifications are at an additional cost to the Board as they require the BreEZe vendor to configure two different business processes for licensure. The first process for the Board’s existing system and a second process to incorporate the legislatively mandated changes which are effective January 1, 2013.
ISSUE #15: Should the current BBS continue to license and regulate Licensed Clinical Social Workers (LCSW), Licensed Marriage and Family Therapists (LMFT), Licensed Educational Psychologists (LEP) and Licensed Professional Clinical Counselors (LPCC)? Should the registration of Associate Social Workers (ASW), Marriage and Family Therapist Interns (MFT Interns), Professional Clinical Counselor Interns (PCC Interns) and Continuing Education Providers continue to be regulated by the current Board?

Committee Recommendation: Recommend that the LCSW, LMFT, LEP and LPCC professions and registration of ASW, MFT Interns, PCC Interns and Continuing Education Providers continue to be regulated by the current the BBS in order to protect the interests of consumers and be reviewed once again in four years.

Board Response: The Board concurs with the Committee’s recommendation.

Thank you for the opportunity to respond to the Committee’s concerns. I hope that you find this information useful and would be pleased to answer any questions you may have.

Sincerely,

Kim Madsen
Executive Officer

cc: Denise Brown, Director, Department of Consumer Affairs
    Tracy Rhine, Deputy Director, Legislative and Policy Review, Department of Consumer Affairs
    Dr. Christine Wietlisbach, Chair, Board of Behavioral Sciences
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To: Board Members
From: Marina Karzag
   Policy and Statistical Analyst
Subject: Continuing Education Provider Review Committee Report

Background

A number of issues have come to the attention of staff this past year related to CE Provider requirements. These issues have been presented and discussed at the October 2011 Policy and Advocacy Committee Meeting and at the November 2011 Board Meeting. The Board voted at its November 2011 meeting to create a two-member committee to review and discuss the Board’s current CE provider requirements and other models of continuing education.

The newly formed CE Provider Review Committee held its first public meeting on April 18, 2012. The meeting focused on the issues regarding the Board’s current CE provider requirements and compared the Board’s requirements with other DCA healing arts boards and licensing boards in other states.

At the Committee meeting, stakeholders provided input on the Board’s current CE provider requirements and expressed support for the Committee’s mission and direction.

The Committee has received written feedback from many of the professional associations that represent the Board’s licensees and will continue to involve interested parties in the process.

The next Committee meeting will be held on May 31, 2012, and will focus on the role of CE provider accrediting agencies and how this model may address some of the issues identified by staff.

Attachments
A. Continuing Education Provider Review Committee Purpose
B. 2012 Committee Meetings
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Continuing Education Provider Review Committee

The Continuing Education Provider Review Committee was appointed in November 2011. The Committee will conduct a holistic review of the Board’s continuing education program and evaluate the issues regarding continuing education and continuing education providers.

The Committee’s work will focus on assessing the Board’s current continuing education program and various continuing education models throughout the state and country. Stakeholders and interested parties will be given an opportunity to provide input, feedback, and express their concerns regarding continuing education and continuing education providers.

The Committee, stakeholders, and interested parties will evaluate relevant data and information to establish a model that provides the Board the authority essential to an effective continuing education model.

The Committee anticipates submitting its recommendation to the Board in 2013.
2012
Continuing Education Provider
Review Committee Meetings

All meetings will be held at:

Department of Consumer Affairs
1625 N. Market Blvd, El Dorado Room
Sacramento, CA 95834

May 31, 2012
July 19, 2012
September 2012 (TBD)
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Dr. Tracy Montez, Applied Measurement Services, LLC will provide an update on the California Marriage and Family Therapy Occupational Analysis and collaboration with the Association of Marital and Family Therapy Regulatory Boards.
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April 25, 2012

California Department of Consumer Affairs
Board of Behavioral Sciences
1625 N. Market Blvd., Ste. S-200
Sacramento, CA 95834

Dear Mrs. Madsen:

In response to your request, an update of the consulting services for evaluating the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) Marital and Family Therapy National Examination is being provided. This update is presented by Applied Measurement Services, LLC (AMS) for the Board of Behavioral Sciences (BBS) board meeting to be held on May 16-17, 2012 in Sacramento.

Since the update presented at the March 2012 BBS board meeting, AMS has reviewed the requested AMFTRB examination program documents received at the end of January. AMS then submitted a list of follow up questions to Lois Paff Bergen, Ph.D., AMFTRB Executive Director. Written responses, including supporting documentation, to these questions were received from AMFTRB within two weeks of submission.

AMS also met again with the Office of Professional Examination Services to update technical staff assigned to the BBS MFT written examination program. The specific purpose of this meeting was to update OPES on the progress of the assessment and discuss the state occupational analysis as it relates to this contracted project. In addition, the intent was to continue good communication across all parties responsible for validation of the BBS MFT examination program and the outcome of the assessment process.

Currently, AMS is evaluating AMFTRB’s responses to the clarification questions, drafting an assessment report, and compiling additional questions in response to the information received from AMFTRB and Professional Examination Services, AMFTRB’s examination vendor.

If you have questions about the information presented in this update, you may contact by mobile phone at 530.788.5346.

Sincerely,

Tracy A. Montez, Ph.D.
President
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Existing Law:

1) Specifies that certain individuals, including Licensed Marriage Family Therapists, Licensed Clinical Social Workers, Licensed Educational Psychologists, and Licensed Professional Clinical Counselors are “mandated reporters” of suspected instances of elder and dependent adult abuse and must report abuse that occurred in a long-term care facility, except as specified, by calling either the local ombudsman or the local law enforcement agency immediately, or as soon as possible (Welfare and Institutions Code [WIC] Section 15630).

2) Requires a mandated reporter to submit a written report within two working days (WIC §15630).

3) Restricts local ombudsman programs from sharing the identity of the complainant in reports of elder or adult abuse with local law enforcement agencies without the consent of the subject of the reported abuse or his or her legal representative (Section 712 of Chapter 2 of Title VII of the Older Americans Act).

4) Requires a mandated reported to report suspected financial abuse of an elder or dependent adult that occurred in a long-term care facility to either the local ombudsman or local law enforcement agency (WIC §15630.1).

5) Allows non-mandated reporters to report suspected instances of abuse of elder or dependent adults that occurred in a long-term care facility to a long-term care ombudsman program or local law enforcement agency (WIC §15631).

6) Defines physical abuse to mean specific types of abuse (WIC §15610.63) (See Attachment B for specific definitions.)

This Bill:

1) Requires a mandated reporter to make a report via telephone to local law enforcement to report suspected instances of elder or dependent adult physical abuse that occurred in a long-term care facility. The written report must be made to both the local ombudsman and the local law enforcement agency (WIC §15630).

2) Requires a report made via telephone and the written report made by a mandated reporter to report suspected instances of elder or dependent adult abuse other than physical abuse
that occurred in a long-term care facility must be made to the local ombudsperson or the local law enforcement agency. (WIC §15630).

3) States that physical abuse is abuse defined in WIC §15610.63. (WIC §15630((b)(1)(A)) (See Attachment B for specific definitions).

4) States for a mandated reporter making a report of known or suspected instances of abuse of an elder or dependent adult, for which reports are not mandated, which occurred in a state mental health hospital or state developmental center, may make the report to the following:

   a. The designated investigator of the State Department of Mental Health; or
   b. The State Department of Developmental Services; or
   c. A local law enforcement agency.

The local ombudsperson has been removed from one of the reporting entities on this list. (WIC §15630)

5) Allows non-mandated reporters to report suspected instances of elder or dependent adult abuse that occurred in a long-term care facility to either the local long-term care ombudsperson program or the local law enforcement agency or both entities (WIC §15631).

Comments:

1) Author’s Intent. According to the Author’s Office, the local ombudsman’s limited ability to share information on reported abuses with local law enforcement may inhibit a thorough investigation, and ultimately, resolution of certain elder and dependent adult abuse reports. Requiring mandated reporters to report suspected physical abuse that occurred in a long-term care facility with both the local ombudsman and local law enforcement would ensure that law enforcement is aware of all reports of this type of criminal activity.

2) Issue of Trust. Mandated reporters may not report suspected instances of abuse to local law enforcement for fear of losing the trust of the subject/client. However, Welfare and Institutions Code Section 15633.5 ensures the confidentiality of the identity of the reporter, except as disclosed to specified agencies and under specified circumstances, such as by court order. Section 15633.5 also states that a reporter is not required to disclose his or her identity in the report. This statute suggests that the level of trust between a mandated reporter and the subject of the abuse may not be compromised by submitting the report of abuse to the law enforcement agency.

3) Proposed Amendment. At the April 19, 2012 Policy and Advocacy Committee meeting, a proposed amendment was suggested. The suggestion was to amend WIC Section 15630(b)(1)(A) to require a report by telephone to local law enforcement be made in the case of alleged physical and/or sexual abuse, as follows:

   WIC §15630(b)(1)(A) If the suspected or alleged abuse is physical abuse and/or sexual abuse, as defined in Section 15610.63, and the abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center, a report made by telephone shall be made to the local law enforcement agency and the written report shall be made to both the local ombudsperson and the local law enforcement agency. If the suspected or alleged abuse is abuse other than physical abuse and/or sexual abuse, as defined in Section 15610.63, and the abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center, a
report made by telephone and the written report shall be made to the local ombudsperson or the local law enforcement agency.

This change was suggested because in other areas of the law that reference physical abuse, sexual abuse is often specified in the reference.

The bill currently references a definition of physical abuse in WIC Section 15610.63, which is provided for reference in Attachment B. The definition of physical abuse in the referenced section does include types of sexual abuse.

4) **Prior Board Position.** This is a 2-year bill that was introduced on December 6, 2010. At its meeting on May 18, 2011, the Board took a support position on this bill.

This bill has been amended since the Board took its last position. Some concern was raised in the Legislature about requiring a dual mandated report, to both a local ombudsperson and the local law enforcement agency. Therefore, the bill has been amended so that such a dual report is only required in the case of suspected physical abuse to an elder or dependent adult.

At its April 19, 2012 Policy and Advocacy Committee meeting, the Committee recommended the Board take a support position on this bill if it is amended to reference “physical abuse and/or sexual abuse.”

5) **Support and Opposition.**

**Support:**
- The Arc of California
- Association of California Healthcare Districts
- Board of Behavioral Sciences
- California Advocates for Nursing Homes Reform
- California Board of Behavioral Sciences
- California District Attorney’s Association
- California Long-Term Care Ombudsman Association
- California Narcotic Officers’ Association
- California Police Chiefs Association
- California Senior Legislature
- Congress of California Seniors
- Contra Costa County Advisory Council on Aging
- Crime Victims United of California
- Disability Rights California Developmental
- Disabilities Area Board 10
  (if amended)
- Emergency Medical Services Association of California
- Los Angeles County District Attorney’s Offices
- National Association of Social Workers, California Chapter
- San Luis Obispo County Adult Abuse Council
- 1 individual

**Oppose:**
- California Bankers Association
- California Association of Health Facilities
Concerns: California Assisted Living Association

6) History

2012
Mar. 21 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on HUMAN S.
Mar. 5 In committee: Hearing postponed by committee.

2011
June 2 Referred to Coms. on HUMAN S. and B. & F.I.
May 23 In Senate. Read first time. To Com. on RLS. for assignment.
May 19 Read second time. Ordered to third reading.
May 18 From committee: Do pass. (Ayes 17. Noes 0.) (May 18).
May 4 From committee: Do pass and re-refer to Com. on APPR. (Ayes 6. Noes 0.) (May 3). Re-referred to Com. on APPR.
Mar. 30 From committee: Do pass and re-refer to Com. on PUB. S. (Ayes 4. Noes 2.) (March 29). Re-referred to Com. on PUB. S.
Mar. 22 Re-referred to Com. on AGING & L.T.C.
Mar. 21 From committee chair, with author's amendments: Amend, and re-refer to Com. on AGING & L.T.C. Read second time and amended.
Jan. 24 Referred to Coms. on AGING & L.T.C. and PUB. S.

2010
Dec. 7 From printer. May be heard in committee January 6.
Dec. 6 Read first time. To print.

7) Attachments

- **Attachment A:** Older Americans Act, Title VII, Chapter 2, Section 712

- **Attachment B:** Relevant Code Section: Definition of Physical Abuse (Welfare and Institutions Code Section 15610.63)

- **Attachment C:** Relevant Code Section: Reporting of Elder or Dependent Adult Abuse (Welfare and Institutions Code Section 15633.5)
ASSEMBLY BILL No. 40

Introduced by Assembly Member Yamada

December 6, 2010

An act to amend Sections 15630, 15630.1, 15630 and 15631 of the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 40, as amended, Yamada. Elder and dependent adult abuse: reporting.

The Elder Abuse and Dependent Adult Civil Protection Act establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse. The act requires a mandated reporter, and authorizes any person who is not a mandated reporter, to report the abuse to the local ombudsman or the local law enforcement agency if the abuse occurs in a long-term care facility. Failure to report physical abuse and financial abuse of an elder or dependent adult under the act is a misdemeanor.

This bill would, instead, require the mandated reporter, and authorize any person who is not a mandated reporter, to report the abuse to both the local ombudsman and the local law enforcement agency.

Existing law requires a mandated reporter of suspected financial abuse of an elder or dependent adult, as defined, to report a known or suspected
instance of financial abuse, as described, to the local ombudsman or the local law enforcement agency if the mandated reporter knows that the elder or dependent adult resides in a long-term care facility.

This bill would, instead, require the mandated reporter to report the abuse to both the local ombudsman and the local law enforcement agency. This bill would also make various technical nonsubstantive changes.

This bill would require that a report made by telephone by a mandated reporter to report suspected or alleged physical abuse, as defined, that occurred in a long-term care facility, be made to the local law enforcement agency and would require that the written report be made to both the local ombudsperson and the local law enforcement agency.

Existing law authorizes a mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated occurred in a state mental hospital or a state developmental center, to report to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services or to a local law enforcement agency or to the local ombudsperson.

This bill would delete the local ombudsperson from the list of whom the mandated reporter may report to under these circumstances. This bill would authorize a person who is not a mandated reporter to report suspected or alleged abuse that occurred in a long-term care facility to both a long-term care ombudsperson program or local law enforcement agency.

By changing the scope of an existing crime, this bill would impose a state-mandated local program. By increasing the duties of local law enforcement agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b) (1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone or through a confidential Internet reporting tool, as authorized by Section 15658, immediately or as soon as practicably possible. If reported by telephone, a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool established in Section 15658, within two working days, as follows:

(A) If the suspected or alleged abuse is physical abuse, as defined in Section 15610.63, and the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, a report made by telephone shall be made to both the local law enforcement agency and the written report shall be made to both the local ombudsperson or and the local law enforcement agency. If the suspected or alleged abuse is abuse other than physical abuse, as defined in Section 15610.63, and the abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center, a report made by telephone and the written report shall be made to the local ombudsperson or the local law enforcement agency.
The local ombudsperson and the local law enforcement agency shall, as soon as practicable, except in the case of an emergency or pursuant to a report required to be made pursuant to clause (v), in which case these actions shall be taken immediately, do all of the following:

(i) Report to the State Department of Public Health any case of known or suspected abuse occurring in a long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or in an adult day care facility, as defined in paragraph (2) of subdivision (a) of Section 1502.

(iii) Report to the State Department of Public Health and the California Department of Aging any case of known or suspected abuse occurring in an adult day health care center, as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse any case of known or suspected criminal activity.

(v) Report all cases of known or suspected physical abuse and financial abuse to the local district attorney’s office in the county where the abuse occurred.

(B) If the suspected or alleged abuse occurred in a state mental hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services, or to the local law enforcement agency.

Except in an emergency, the local law enforcement agency shall, as soon as practicable, report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not subject to paragraph (1). For purposes of this subdivision, “penitential communication” means a communication that is intended to be in confidence, including, but not limited to, a sacramental confession.
made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(B) Nothing in this subdivision shall not be construed to modify or limit a clergy member’s duty to report known or suspected elder and dependent adult abuse when if he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services agency.

(C) Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.

(3) (A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident where if all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected
incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(4) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where if all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Public Health determines, upon approval by the Bureau of Medi-Cal Fraud and Elder Abuse and the state long-term care ombudsperson, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult, or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsperson program. Except in an emergency, the local ombudsperson shall report any case of known or suspected abuse to the State Department of Public Health and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be
made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services or to a local law enforcement agency or to the local ombudsperson. Except in an emergency, the local ombudsperson and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report or Internet report, as authorized by Section 15658, may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report or Internet report, as authorized by Section 15658, of a known or suspected instance of elder or dependent adult abuse shall include, if known, the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other adult responsible for the elder’s or dependent adult’s care, the nature and extent of the elder’s or dependent adult’s condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors
and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide to that law enforcement agency a copy of its investigative report concerning the reported matter.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report, or impeding or inhibiting a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report, or impedes or inhibits a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where if that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a law enforcement agency specified in paragraph (1) of subdivision (b) of Section 15630 discovers the offense.

(i) For purposes of this section, “dependent adult” shall have the same meaning as in Section 15610.23.
SECTION 1. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b)(1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as practicably possible, and by written report sent within two working days, as follows:

(A) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to both the local ombudsman and the local law enforcement agency.

The local ombudsman and the local law enforcement agency shall, as soon as practicable, except in the case of an emergency or pursuant to a report required to be made pursuant to clause (v), in which case these actions shall be taken immediately, do all of the following:

(i) Report to the State Department of Public Health any case of known or suspected abuse occurring in a long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly, as defined in Section 1569.2 of the Health and...
Safety Code, or in an adult day care facility, as defined in paragraph
(2) of subdivision (a) of Section 1502.

(iii) Report to the State Department of Public Health and the
California Department of Aging any case of known or suspected
abuse occurring in an adult day health care center, as defined in
subdivision (b) of Section 1570.7 of the Health and Safety Code.

(iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse
any case of known or suspected criminal activity.

(v) Report all cases of known or suspected physical abuse and
financial abuse to the local district attorney’s office in the county
where the abuse occurred.

(B) If the suspected or alleged abuse occurred in a state mental
hospital or a state developmental center, the report shall be made
to designated investigators of the State Department of Mental
Health or the State Department of Developmental Services, or to
the local law enforcement agency.

Except in an emergency, the local law enforcement agency shall,
as soon as practicable, report any case of known or suspected
criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

(C) If the abuse has occurred any place other than one described
in subparagraph (A), the report shall be made to the adult protective
services agency or the local law enforcement agency.

(2) (A) A mandated reporter who is a clergy member who
acquires knowledge or reasonable suspicion of elder or dependent
adult abuse during a penitential communication is not subject to
paragraph (1). For purposes of this subdivision, “penitential
communication” means a communication that is intended to be in
confidence, including, but not limited to, a sacramental confession
made to a clergy member who, in the course of the discipline or
practice of his or her church, denomination, or organization is
authorized or accustomed to hear those communications and under
the discipline tenets, customs, or practices of his or her church,
denomination, or organization, has a duty to keep those
communications secret.

(B) This subdivision shall not be construed to modify or limit
a clergy member’s duty to report known or suspected elder and
dependent adult abuse if he or she is acting in the capacity of a
care custodian, health practitioner, or employee of an adult
protective services agency.
(C) Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.

(3) (A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident if all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(4) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident if all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).
(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Public Health determines, upon approval by the Bureau of Medi-Cal Fraud and Elder Abuse and the state long-term care ombudsman, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult, or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program. Except in an emergency, the local ombudsman shall report any case of known or suspected abuse to the State Department of Public Health and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services or to a local law enforcement agency or to the local ombudsman. Except in an emergency, the local ombudsman and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.
(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) If two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include, if known, the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other adult responsible for the elder’s or dependent adult’s care, the nature and extent of the elder’s or dependent adult’s condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide to that law enforcement agency a copy of its investigative report concerning the reported matter.
(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report, or impeding or inhibiting a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report, or impedes or inhibits a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, if that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a law enforcement agency specified in paragraph (1) of subdivision (b) of Section 15630 discovers the offense.

(i) For purposes of this section, “dependent adult” shall have the same meaning as in Section 15610.23.

SEC. 2. Section 15630.1 of the Welfare and Institutions Code is amended to read:

15630.1. (a) As used in this section, “mandated reporter of suspected financial abuse of an elder or dependent adult” means all officers and employees of financial institutions.

(b) As used in this section, the term “financial institution” means any of the following:

(1) A depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c));

(2) An institution-affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u));

(3) A federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752);
including, but not limited to, an institution-affiliated party of a credit union, as defined in Section 206(r) of the Federal Credit Union Act (12 U.S.C. Sec. 1786(r)).

c. As used in this section, "financial abuse" has the same meaning as in Section 15610.30.

d. (1) Any mandated reporter of suspected financial abuse of an elder or dependent adult who has direct contact with the elder or dependent adult or who reviews or approves the elder or dependent adult’s financial documents, records, or transactions, in connection with providing financial services with respect to an elder or dependent adult, and who, within the scope of his or her employment or professional practice, has observed or has knowledge of an incident, that is directly related to the transaction or matter that is within that scope of employment or professional practice, that reasonably appears to be financial abuse, or who reasonably suspects that abuse, based solely on the information before him or her at the time of reviewing or approving the document, record, or transaction in the case of mandated reporters who do not have direct contact with the elder or dependent adult, shall report the known or suspected instance of financial abuse by telephone immediately, or as soon as practicably possible, and by written report sent within two working days to the local adult protective services agency or the local law enforcement agency.

(2) When two or more mandated reporters jointly have knowledge or reasonably suspect that financial abuse of an elder or a dependent adult for which the report is mandated has occurred, and when there is an agreement among them, the telephone report may be made by a member of the reporting team who is selected by mutual agreement. A single report may be made and signed by the selected member of the reporting team. Any member of the team who has knowledge that the member designated to report has failed to do so shall thereafter make that report.

(3) If the mandated reporter knows that the elder or dependent adult resides in a long-term care facility, as defined in Section 15610.47, the report shall be made to the local ombudsman and local law enforcement agency.

e. An allegation by the elder or dependent adult, or any other person, that financial abuse has occurred is not sufficient to trigger the reporting requirement under this section if both of the following conditions are met:
(1) The mandated reporter of suspected financial abuse of an elder or dependent adult is aware of no other corroborating or independent evidence of the alleged financial abuse of an elder or dependent adult. The mandated reporter of suspected financial abuse of an elder or dependent adult is not required to investigate any accusations.

(2) In the exercise of his or her professional judgment, the mandated reporter of suspected financial abuse of an elder or dependent adult reasonably believes that financial abuse of an elder or dependent adult did not occur.

(f) Failure to report financial abuse under this section shall be subject to a civil penalty not exceeding one thousand dollars ($1,000) or if the failure to report is willful, a civil penalty not exceeding five thousand dollars ($5,000), which shall be paid by the financial institution that is the employer of the mandated reporter to the party bringing the action. Subdivision (h) of Section 15630 shall not apply to violations of this section.

(g) (1) The civil penalty provided for in subdivision (f) shall be recovered only in a civil action brought against the financial institution by the Attorney General, district attorney, or county counsel. No action shall be brought under this section by any person other than the Attorney General, district attorney, or county counsel. Multiple actions for the civil penalty may not be brought for the same violation.

(2) Nothing in the Financial Elder Abuse Reporting Act of 2005 shall be construed to limit, expand, or otherwise modify any civil liability or remedy that may exist under this or any other law.

(h) As used in this section, “suspected financial abuse of an elder or dependent adult” occurs when a person who is required to report under subdivision (a) observes or has knowledge of behavior or unusual circumstances or transactions, or a pattern of behavior or unusual circumstances or transactions, that would lead an individual with like training or experience, based on the same facts, to form a reasonable belief that an elder or dependent adult is the victim of financial abuse as defined in Section 15610.30.

(i) Reports of suspected financial abuse of an elder or dependent adult made by an employee or officer of a financial institution pursuant to this section are covered under subdivision (b) of Section 47 of the Civil Code.
(j) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 2.

Section 15631 of the Welfare and Institutions Code is amended to read:

15631. (a) Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse may report that abuse to a long-term care ombudsman program or local law enforcement agency or both the long-term care ombudsman program and local law enforcement agency when the abuse is alleged to have occurred in a long-term care facility.

(b) Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse in any place other than a long-term care facility may report the abuse to the county adult protective services agency or local law enforcement agency.

SEC. 3.

No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
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OLDER AMERICANS ACT OF 1965

As Amended In 2006 (Public Law 109-365)

TITLE VII—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES
Subtitle A—State Provision

CHAPTER 2—OMBUDSMAN PROGRAMS

Section 712. STATE LONG-TERM CARE OMBUDSMAN PROGRAM.

(d) DISCLOSURE.

(1) IN GENERAL.—The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files maintained by the program, including records described in subsection (b)(1) or (c).

(2) IDENTITY OF COMPLAINANT OR RESIDENT.—The procedures described in paragraph (1) shall—

(A) provide that, subject to subparagraph (B), the files and records described in paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records); and

(B) prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless—

(i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;

(ii) (I) the complainant or resident gives consent orally; and

(II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or

(iii) the disclosure is required by court order.
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Welfare and Institutions Code Section 15610.63.

"Physical abuse" means any of the following:

(a) Assault, as defined in Section 240 of the Penal Code.

(b) Battery, as defined in Section 242 of the Penal Code.

(c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.

(d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

(e) Sexual assault, that means any of the following:

   (1) Sexual battery, as defined in Section 243.4 of the Penal Code.

   (2) Rape, as defined in Section 261 of the Penal Code.

   (3) Rape in concert, as described in Section 264.1 of the Penal Code.

(4) Spousal rape, as defined in Section 262 of the Penal Code.

(5) Incest, as defined in Section 285 of the Penal Code.

(6) Sodomy, as defined in Section 286 of the Penal Code.

(7) Oral copulation, as defined in Section 288a of the Penal Code.

(8) Sexual penetration, as defined in Section 289 of the Penal Code.

(9) Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code.

(f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:

   (1) For punishment.

   (2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

   (3) For any purpose not authorized by the physician and surgeon.
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Relevant Code Section: Reporting Elder or Dependent Adult Abuse

Welfare and Institutions Code

Section 15633.5.
(a) Information relevant to the incident of elder or dependent adult abuse may be given to an investigator from an adult protective services agency, a local law enforcement agency, the office of the district attorney, the office of the public guardian, the probate court, the bureau, or an investigator of the Department of Consumer Affairs, Division of Investigation who is investigating a known or suspected case of elder or dependent adult abuse.

(b) The identity of any person who reports under this chapter shall be confidential and disclosed only among the following agencies or persons representing an agency:
   (1) An adult protective services agency.
   (2) A long-term care ombudsperson program.
   (3) A licensing agency.
   (4) A local law enforcement agency.
   (5) The office of the district attorney.
   (6) The office of the public guardian.
   (7) The probate court.
   (8) The bureau.
   (9) The Department of Consumer Affairs, Division of Investigation.
   (10) Counsel representing an adult protective services agency.

(c) The identity of a person who reports under this chapter may also be disclosed under the following circumstances:
   (1) To the district attorney in a criminal prosecution.
   (2) When a person reporting waives confidentiality.
   (3) By court order.

(d) Notwithstanding subdivisions (a), (b), and (c), any person reporting pursuant to Section 15631 shall not be required to include his or her name in the report.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 171 VERSION: AMENDED JANUARY 23, 2012

AUTHOR: BEALL SPONSOR: Alliance of California Autism Organizations

RECOMMENDED POSITION: SUPPORT

SUBJECT: Pervasive Development Disorder or Autism

Existing Law:

1) Requires health care service plan contracts and disability insurance policies that provide hospital, medical or surgical coverage to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses, regardless of age, and of serious emotional disturbances of a child. (Health and Safety Code (HSC) §1374.72(a), Insurance Code (IC) §10144.5(a)).

2) Defines “severe mental illnesses” as follows (HSC §1374.72(d), IC §10144.5(d)):
   a) Schizophrenia.
   b) Schizoaffective disorder.
   c) Bipolar disorder (manic-depressive illness).
   d) Major depressive disorders.
   e) Panic disorder.
   f) Obsessive-compulsive disorder.
   g) Pervasive developmental disorder or autism.
   h) Anorexia nervosa.
   i) Bulimia nervosa.

3) Defines “serious emotional disturbances of a child” as a child who has one or more mental disorders as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) (other than a primary substance use disorder or development disorder) that results in age-inappropriate behavior (HSC §1374.72(e), IC §10144.5(e))).
   One or more of the following criteria must also be met (HSC §5600.3(a)(2)):

   (A) As a result of the mental disorder, the child has substantial impairment in at least two of the following areas: self-care, school functioning, family relationships, or ability to function in the community; and either of the following occur:

   (i) The child is at risk of removal from home or has already been removed from the home.
   (ii) The mental disorder and impairments have been present for more than six months or are likely to continue for more than one year without treatment.

   (B) The child displays one of the following: psychotic features, risk of suicide or risk of violence due to a mental disorder.
(C) The child meets special education eligibility requirements under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

4) Requires the benefits provided to include outpatient services, inpatient hospital services, partial hospital services, and prescription drugs (if the plan includes prescription drug coverage). (HSC §1374.72(b), IC §10144.5(b)).

5) Requires that maximum lifetime benefits, copayments, and individual and family deductibles that apply to these benefits have the same terms and conditions as they do for any other benefits under the plan contract. (HSC §1374.72(c), IC §10144.5(c)).

6) Requires that every health care service plan or insurance policy that provides hospital, medical or surgical coverage must also provide coverage for behavioral health treatment for pervasive developmental disorder or autism, by no later than July 1, 2012. (HSC §1374.73(a), IC §10144.51(a))

7) Defines “behavioral health treatment” as professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs which develop or restore the functioning of an individual with pervasive developmental disorder or autism, and meets the following criteria (HSC §1374.73(c), IC §10144.51(c):

   a) Is prescribed by a licensed physician and surgeon or is developed by a licensed psychologist;

   b) Is provided under a treatment plan prescribed by a qualified autism service provider and administered by such a provider or by a qualified professional under supervision of a qualified autism service provider;

   c) The treatment plan has measurable goals over a specific timeline and the plan is reviewed by the provider at least once every six months; and

   d) Is not used for purposes of providing or for the reimbursement of respite, day care, or educational services.

This Bill:

1) Would require every health care service plan contract or health insurance policy issued, amended, or renewed after January 1, 2013, that provides hospital, medical, or surgical coverage must provide coverage for the screening, diagnosis, and treatment of pervasive developmental disorder or autism. (HSC §1374.745(a), IC §10144.53(a))

2) Defines “diagnosis of pervasive development disorder or autism” as medically necessary assessment, evaluations, or tests to diagnose whether one has pervasive development disorder or autism (HSC § 1374.745(i)(1), IC §10144.53(i)(1))

3) Defines “treatment for pervasive developmental disorder or autism” to mean the following care, and necessary equipment, that is ordered and deemed medically necessary by a specified licensed professional for an individual with pervasive development disorder or autism (HSC §1374.745(i)(7), IC§10144.53(i)(7)):

   • Pharmacy care
   • Psychiatric care
• Psychological care
• Therapeutic care

4) Specifies that treatment for pervasive developmental disorder or autism does not include behavioral health treatment. (HSC §1374.745(i)(8), IC §10144.53(i)(8))

5) Prohibits a health care service plan from terminating coverage or refusing to deliver, execute, issue, amend, adjust, or renew coverage to an enrollee or insured solely because that person is diagnosed with or has received treatment for pervasive developmental disorder or autism. (HSC §1374.745(b), IC §10144.53(b))

6) Requires coverage to include all medically necessary services and prohibits any limitations based on age, number of visits, or dollar amounts. (HSC §1374.745(c), IC §10144.53(c))

7) Provisions for lifetime maximums, deductibles, copayments, coinsurance or other terms and conditions for coverage of pervasive developmental disorder or autism must not be less favorable than the provisions that apply to general physical illnesses covered by the plan. (HSC §1374.745(c), IC §10144.53(c))

8) Prohibits coverage for pervasive developmental disorder or autism from being denied on the basis of the location of delivery of the treatment, or because the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature. (HSC §1374.745(d), IC §10144.53(d))

9) Requires a health care service plan and health insurer to establish and maintain an adequate network of service providers, with appropriate training and experience in pervasive developmental disorder or autism so that patients have a choice of providers, timely access, continuity of care, and ready referral to the services required to be provided by this bill. (HSC §1374.745(f), IC §10144.53(f))

10) Provides that on and after January 1, 2014, no benefits are required to be provided that are in excess of federally required essential health benefits as defined by Federal Law. (HSC §1374.745(h), IC §10144.53(h)).

Comments:

1) Author’s Intent. Due to loopholes in current law, those with pervasive development disorder or autism (PDD/A) are frequently denied coverage for their disorder. When they are denied coverage, those with PDD/A must either go without treatment, pay for treatment privately, or spend time appealing health plan and insurer denials. Many with health insurance who are denied coverage for PDD/A seek treatment through Regional Centers, school districts, or counties, shifting the cost burden to the taxpayers. The goal of this bill is to end health care discrimination against those with PDD/A by specifically requiring health plans and insurers to cover screening, diagnosis, and all medically necessary treatment related to the disorder.

2) Expansion of Current Law. Current law requires coverage for the diagnosis and medically necessary treatment of pervasive developmental disorder or autism. However, lack of detail as to the nature of this coverage provides loopholes for insurers to frequently deny coverage for treatments. For example, they may say the treatment is not medically necessary, non-medical, experimental, or educational only. This bill would make the law more explicit about what must be covered.
3) **Previous Legislation.** SB 946 (Chapter 650, Statutes of 2011) was signed into law last fall. It requires, no later than July 1, 2012, that every health care service plan contract that provides hospital, medical, or surgical coverage shall also provide coverage for behavioral health treatment for PDD/A. This bill would expand upon SB 946 by requiring health care service plan contracts and health insurance policies to provide coverage for the screening, diagnosis, and treatment of PDD/A other than behavioral health treatment.

Behavioral health treatment is specifically excluded from this bill because it is already required by law as a result of SB 946 (HSC §1374.73, IC§10144.51). To ensure the author’s intent that behavioral health treatment remain covered, this bill includes the following language:

- **HSC §1374.745(g)(2)** This section shall not be construed as limiting or excluding benefits that are otherwise available to an enrollee under a health care service plan, including, but not limited to, benefits that are required to be covered pursuant to Sections 1374.72 and 1374.73.

- **IC §10144.53(g)(2)** This section shall not be construed as limiting or excluding benefits that are otherwise available to an enrollee under a health insurance policy, including, but not limited to, benefits that are required to be covered under Sections 10144.5 and 10144.51.

4) **Suggested Amendment.** This bill would require insurers to provide coverage for the screening, diagnosis, and treatment of PDD/A. The bill specifically defines “diagnosis of pervasive developmental disorder or autism” and “treatment for pervasive developmental disorder or autism,” citing specific care that these entail. However, there is no definition of “screening of pervasive developmental disorder or autism.” As the purpose of this bill is to close loopholes allowing denial of medically necessary coverage, it is suggested that “screening of autism spectrum disorders” also be specifically defined.

5) **Recommended Position.** This is a 2-year bill. At its meeting on May 18, 2011, the Board took a “support if amended” position on this bill, recommending the bill be amended to define the term “screening of autism spectrum disorders.”

This bill has since been amended to incorporate both minor changes and to account for the recent passage of SB 946.

At its meeting on April 19, 2012, the Policy and Advocacy Committee recommended that the Board take a support position on this bill, and asked that staff work with the author’s office to address some minor technical concerns.

6) **Support and Opposition.**

Support:
- Alliance of California Autism Organizations (sponsor)
- Alameda County Developmental Disabilities Council
- American Association of University Women California
- Area 4 Board, State Council of Developmental Disabilities
- Area 10 Board, State Council of Developmental Disabilities
- Association of Regional Center Agencies
- Autism Deserves Equal Coverage
- Autism Speaks
• California Association of Marriage and Family Therapists
• California Association of School Psychologists
• California Communities United Institute
• California Primary Care Association
• California School Boards Association
• Contra Costa Health Services
• Developmental Disabilities Area Board 10, State of California
• People’s Care
• San Francisco Unified School District
• Solano County Families for Effective Autism Treatment
• State Council on Developmental Disabilities
• The Arc of California
• Several individuals

Oppose:
• America’s Health Insurance Plans
• Association of California Life & Health Insurance Companies
• California Association of Health Plans
• California Chamber of Commerce

7) History

2012
Feb. 16 Referred to Com. on HEALTH.
Jan. 26 In Senate. Read first time. To Com. on RLS. for assignment.
Jan. 24 Read second time. Ordered to third reading.
Jan. 23 Read second time and amended. Ordered to second reading.

2011
May 27 In committee: Hearing postponed by committee.
May 11 In committee: Set, first hearing. Referred to APPR. suspense file.
May 4 Re-referred to Com. on APPR.
May 3 Read second time and amended.
May 2 From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 12. Noes 6.) (April 26).
Apr. 7 Re-referred to Com. on HEALTH.
Apr. 6 From committee chair, with author’s amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
Feb. 3 Referred to Com. on HEALTH.
Jan. 21 From printer. May be heard in committee February 20.
Jan. 20 Read first time. To print.
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ASSEMBLY BILL No. 171

Introduced by Assembly Member Beall
(Coauthors: Assembly Members Ammiano, Blumenfield, Brownley, Carter, Chesbro, Eng, Huffman, Mitchell, Swanson, Wieckowski, Williams, and Yamada)

January 20, 2011

An act to add Section 1374.73 1374.745 to the Health and Safety Code, and to add Section 10144.51 10144.53 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL’S DIGEST

AB 171, as amended, Beall. Autism-spectrum disorder. Pervasive developmental disorder or autism.

(1) Existing law provides for licensing and regulation of health care service plans by the Department of Managed Health Care. A willful violation of these provisions is a crime. Existing law provides for licensing and the regulation of health insurers by the Insurance Commissioner. Existing law requires health care service plan contracts and health insurance policies to provide benefits for specified conditions, including certain mental health conditions. Coverage for the diagnosis and treatment of severe mental illnesses, including pervasive developmental disorder or autism, under the same terms and conditions applied to other medical conditions, as specified. Commencing July 1, 2012, and until July 1, 2014, existing law requires health care service
plan contracts and health insurance policies to provide coverage for behavioral health treatment, as defined, for pervasive developmental disorder or autism.

This bill would require health care service plan contracts and health insurance policies to provide coverage for the screening, diagnosis, and treatment, other than behavioral health treatment, of autism spectrum disorders pervasive developmental disorder or autism. The bill would, however, provide that no benefits are required to be provided by a health benefit plan offered through the California Health Benefit Exchange that exceed the essential health benefits required that exceed the essential health benefits that will be required under specified federal law. The bill would prohibit coverage from being denied for specified reasons health care service plans and health insurers from denying, terminating, or refusing to renew coverage solely because the individual is diagnosed with or has received treatment for pervasive developmental disorder or autism. Because the bill would change the definition of a crime with respect to health care service plans, it would thereby impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.


The people of the State of California do enact as follows:

SECTION 1. Section 1374.73 1374.745 is added to the Health and Safety Code, to read:

1374.73. (a) Every health care service plan contract issued, amended, or renewed on or after January 1, 2012 2013, that provides hospital, medical, or surgical coverage shall provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders pervasive developmental disorder or autism.

(b) A health care service plan shall not terminate coverage, or refuse to deliver, execute, issue, amend, adjust, or renew coverage, to an enrollee solely because the individual is diagnosed with, or
has received treatment for an autism spectrum disorder pervasive
developmental disorder or autism.

(c) Coverage required to be provided under this section shall extend to all medically necessary services and shall not be subject to any limits regarding age, number of visits, or dollar amounts. Coverage required to be provided under this section shall not be subject to provisions relating to lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that are less favorable to an enrollee than lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that apply to physical illness generally under the plan contract.

(d) Coverage required to be provided under this section is a health care service and a covered health care benefit for purposes of this chapter. Coverage shall not be denied on the basis of the location of delivery of the treatment or on the basis that the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature.

(e) A health care service plan may request, no more than once annually, a review of treatment provided to an enrollee for autism spectrum disorders pervasive developmental disorder or autism. The cost of obtaining the review shall be borne by the plan. This subdivision does not apply to inpatient services.

(f) A health care service plan shall establish and maintain an adequate network of qualified autism service providers with appropriate training and experience in autism spectrum disorders pervasive developmental disorder or autism to ensure that enrollees have a choice of providers, and have timely access, continuity of care, and ready referral to all services required to be provided by this section consistent with Sections 1367 and 1367.03 and the regulations adopted pursuant thereto.

(g) (1) This section shall not be construed as reducing any obligation to provide services to an enrollee under an individualized family service plan, an individualized program plan, a prevention program plan, an individualized education program, or an individualized service plan.

(2) This section shall not be construed as limiting or excluding benefits that are otherwise available to an enrollee under a health care service plan, plan, including, but not limited to, benefits that are required to be covered pursuant to Sections 1374.72 and 1374.73.
(3) This section shall not be construed to mean that the services required to be covered pursuant to this section are not required to be covered under other provisions of this chapter.

(4) This section shall not be construed as affecting litigation that is pending on January 1, 2012.

(h) On and after January 1, 2014, to the extent that this section requires health benefits to be provided that exceed the essential health benefits required to be provided under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) by qualified health plans offering those benefits in the California Health Benefit Exchange pursuant to Title 22 (commencing with Section 100500) of the Government Code, the specific benefits that exceed the federally required essential health benefits are not required to be provided when offered by a health care service plan contract through the Exchange. However, those specific benefits are required to be provided if offered by a health care service plan contract outside of the Exchange.

(i) As used in this section, the following terms shall have the following meanings:

(1) “Autism spectrum disorder” means a neurobiological condition that includes autistic disorder, Asperger’s disorder, Rett’s disorder, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified.

(2) “Behavioral health treatment” means professional services and treatment programs, including behavioral intervention therapy, applied behavioral analysis, and other intensive behavioral programs, that have demonstrated efficacy to develop, maintain, or restore, to the maximum extent practicable, the functioning or quality of life of an individual and that have been demonstrated
to treat the core symptoms associated with autism spectrum disorder.

(3) “Behavioral intervention therapy” means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in behaviors, including the use of direct observation, measurement, and functional analyses of the relationship between environment and behavior.

(4) (1) “Diagnosis of autism spectrum disorders” pervasive developmental disorder or autism” means medically necessary assessment, evaluations, or tests to diagnose whether an individual has one of the autism spectrum disorders pervasive developmental disorder or autism.

(5) “Evidence-based research” means research that applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.

(2) “Pervasive developmental disorder or autism” shall have the same meaning and interpretation as used in Section 1374.72.

(6) (3) “Pharmacy care” means medications prescribed by a licensed physician and surgeon or other appropriately licensed or certified provider and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

(7) (4) “Psychiatric care” means direct or consultative psychiatric services provided by a psychiatrist or any other appropriately licensed or certified provider licensed in the state in which he or she practices.

(8) (5) “Psychological care” means direct or consultative psychological services provided by a psychologist or any other appropriately licensed or certified provider licensed in the state in which he or she practices.

(9) “Qualified autism service provider” shall include any nationally or state licensed or certified person, entity, or group that designs, supervises, or provides treatment of autism spectrum disorders and the unlicensed personnel supervised by the licensed or certified person, entity, or group, provided the services are within the experience and scope of practice of the licensed or
certified person, entity, or group. “Qualified autism service provider” shall also include any service provider that is vendorized by a regional center to provide those same services for autism spectrum disorders under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code and the unlicensed personnel supervised by that provider, or a State Department of Education nonpublic, nonsectarian agency as defined in Section 56035 of the Education Code approved to provide those same services for autism spectrum disorders and the unlicensed personnel supervised by that agency. A qualified autism service provider shall ensure criminal background screening and fingerprinting, and adequate training and supervision of all personnel utilized to implement services. Any national license or certification recognized by this section shall be accredited by the National Commission for Certifying Agencies (NCCA).

(10) “Therapeutic care” means services provided by a licensed or certified speech therapists therapist, an occupational therapists therapist, or a physical therapists or any other appropriately licensed or certified provider therapist.

(11) “Treatment for autism spectrum disorders” pervasive developmental disorder or autism” means all of the following care, including necessary equipment, that develops, maintains, or restores to the maximum extent practicable the functioning or quality of life of an individual with pervasive developmental disorder or autism and is prescribed or ordered for an individual diagnosed with one of the autism spectrum disorders pervasive developmental disorder or autism by a licensed physician and surgeon or a licensed psychologist or any other appropriately licensed or certified provider who determines the care to be medically necessary:

(A) Behavioral health treatment.

(B) Pharmacy care, if the plan contract includes coverage for prescription drugs.

(C) Psychiatric care.
(C) Psychological care.

(D) Therapeutic care.

(F) Any care for individuals with autism spectrum disorders that is demonstrated, based upon best practices or evidence-based research, to be medically necessary.

(8) “Treatment for pervasive developmental disorder or autism” does not include behavioral health treatment, as defined in Section 1374.73.

(j) This section, with the exception of subdivision (b), shall not apply to dental-only or vision-only health care service plan contracts.

SEC. 2. Section 10144.51 10144.53 is added to the Insurance Code, to read:

10144.51. 10144.53. (a) Every health insurance policy issued, amended, or renewed on or after January 1, 2012, that provides hospital, medical, or surgical coverage shall provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders pervasive developmental disorder or autism.

(b) A health insurer shall not terminate coverage, or refuse to deliver, execute, issue, amend, adjust, or renew coverage, to an insured solely because the individual is diagnosed with, or has received treatment for, an autism spectrum disorder pervasive developmental disorder or autism.

(c) Coverage required to be provided under this section shall extend to all medically necessary services and shall not be subject to any limits regarding age, number of visits, or dollar amounts. Coverage required to be provided under this section shall not be subject to provisions relating to lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that are less favorable to an insured than lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that apply to physical illness generally under the policy.

(d) Coverage required to be provided under this section is a health care service and a covered health care benefit for purposes of this part. Coverage shall not be denied on the basis of the location of delivery of the treatment or on the basis that the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature.
(e) A health insurer may request, no more than once annually, a review of treatment provided to an insured for autism spectrum disorders, pervasive developmental disorder or autism. The cost of obtaining the review shall be borne by the insurer. This subdivision does not apply to inpatient services.

(f) A health insurer shall establish and maintain an adequate network of qualified autism service providers with appropriate training and experience in autism spectrum disorders, pervasive developmental disorder or autism to ensure that insureds have a choice of providers, and have timely access, continuity of care, and ready referral to all services required to be provided by this section consistent with Sections 10133.5 and 10133.55 and the regulations adopted pursuant thereto.

(g) (1) This section shall not be construed as reducing any obligation to provide services to an insured under an individualized family service plan, an individualized program plan, a prevention program plan, an individualized education program, or an individualized service plan.

(2) This section shall not be construed as limiting or excluding benefits that are otherwise available to an enrollee under a health insurance policy, including, but not limited to, benefits that are required to be covered under Sections 10144.5 and 10144.51.

(3) This section shall not be construed to mean that the services required to be covered pursuant to this section are not required to be covered under other provisions of this chapter.

(4) This section shall not be construed as affecting litigation that is pending on January 1, 2012.

(h) On and after January 1, 2014, to the extent that this section requires health benefits to be provided that exceed the essential health benefits required to be provided under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) by qualified health plans offering those benefits in the California Health Benefit Exchange pursuant to Title 22 (commencing with Section 100500) of the Government Code, the specific benefits that exceed the federally required essential health benefits are not required to be provided when offered by a health insurance policy through the Exchange. However, those specific benefits are
required to be provided if offered by a health insurance policy outside of the Exchange.

(h) Notwithstanding subdivision (a), on and after January 1, 2014, this section does not require any benefits to be provided that exceed the essential health benefits that all health plans will be required by federal regulations to provide under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).

(i) As used in this section, the following terms shall have the following meanings:

(1) “Autism spectrum disorder” means a neurobiological condition that includes autistic disorder, Asperger’s disorder, Rett’s disorder, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified.

(2) “Behavioral health treatment” means professional services and treatment programs, including behavioral intervention therapy, applied behavioral analysis, and other intensive behavioral programs, that have demonstrated efficacy to develop, maintain, or restore, to the maximum extent practicable, the functioning or quality of life of an individual and that have been demonstrated to treat the core symptoms associated with autism spectrum disorder.

(3) “Behavioral intervention therapy” means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in behaviors, including the use of direct observation, measurement, and functional analyses of the relationship between environment and behavior.

(4)

(1) “Diagnosis of autism spectrum disorders” pervasive developmental disorder or autism” means medically necessary assessment, evaluations, or tests to diagnose whether an individual has one of the autism spectrum disorders pervasive developmental disorder or autism.

(5) “Evidence-based research” means research that applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.

(2) “Pervasive developmental disorder or autism” shall have the same meaning and interpretation as used in Section 1374.72.
(6) “Pharmacy care” means medications prescribed by a licensed physician and surgeon or other appropriately licensed or certified provider and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

(7) “Psychiatric care” means direct or consultative psychiatric services provided by a psychiatrist or any other appropriately licensed or certified provider licensed in the state in which he or she practices.

(8) “Psychological care” means direct or consultative psychological services provided by a psychologist or any other appropriately licensed or certified provider licensed in the state in which he or she practices.

(9) “Qualified autism service provider” shall include any nationally or state licensed or certified person, entity, or group that designs, supervises, or provides treatment of autism spectrum disorders and the unlicensed personnel supervised by the licensed or certified person, entity, or group, provided the services are within the experience and scope of practice of the licensed or certified person, entity, or group. “Qualified autism service provider” shall also include any service provider that is vendorized by a regional center to provide those same services for autism spectrum disorders under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code and the unlicensed personnel supervised by that provider, or a State Department of Education nonpublic, nonsectarian agency as defined in Section 56035 of the Education Code approved to provide those same services for autism spectrum disorders and the unlicensed personnel supervised by that agency. A qualified autism service provider shall ensure criminal background screening and fingerprinting, and adequate training and supervision of all personnel utilized to implement services. Any national license or certification recognized by this section shall be accredited by the National Commission for Certifying Agencies (NCCA).

(10) “Therapeutic care” means services provided by a licensed or certified speech therapists, therapist, an occupational therapists
therapist, or a physical therapists or any other appropriately licensed or certified provider therapist.

(7) “Treatment for autism spectrum disorders” pervasive developmental disorder or autism” means all of the following care, including necessary equipment, that develops, maintains, or restores to the maximum extent practicable the functioning or quality of life of an individual with pervasive developmental disorder or autism and is prescribed or ordered for an individual diagnosed with one of the autism spectrum disorders pervasive developmental disorder or autism by a licensed physician and surgeon or a licensed psychologist or any other appropriately licensed or certified provider who determines the care to be medically necessary:

(A) Behavioral health treatment.
(B) Pharmacy care, if the policy includes coverage for prescription drugs.
(C) Psychiatric care.
(D) Psychological care.
(E) Therapeutic care.
(F) Any care for individuals with autism spectrum disorders that is demonstrated, based upon best practices or evidence-based research, to be medically necessary.

(8) “Treatment for pervasive developmental disorder or autism” does not include behavioral health treatment, as defined in Section 10144.51.

(j) This section, with the exception of subdivision (b), shall not apply to dental-only or vision-only health insurance policies.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California Constitution.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 171

VERSION: AMENDED JANUARY 23, 2012

AUTHOR: BEALL

SPONSOR: Alliance of California Autism Organizations

RECOMMENDED POSITION: SUPPORT

SUBJECT: PERVERSIVE DEVELOPMENT DISORDER OR AUTISM

Existing Law:

1) Requires health care service plan contracts and disability insurance policies that provide hospital, medical or surgical coverage to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses, regardless of age, and of serious emotional disturbances of a child. (Health and Safety Code (HSC) §1374.72(a), Insurance Code (IC) §10144.5(a)).

2) Defines “severe mental illnesses” as follows (HSC §1374.72(d), IC §10144.5(d)):
   a) Schizophrenia.
   b) Schizoaffective disorder.
   c) Bipolar disorder (manic-depressive illness).
   d) Major depressive disorders.
   e) Panic disorder.
   f) Obsessive-compulsive disorder.
   g) Pervasive developmental disorder or autism.
   h) Anorexia nervosa.
   i) Bulimia nervosa.

3) Defines “serious emotional disturbances of a child” as a child who has one or more mental disorders as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) (other than a primary substance use disorder or development disorder) that results in age-inappropriate behavior (HSC §1374.72(e), IC §10144.5(e))). One or more of the following criteria must also be met (HSC §5600.3(a)(2)):

   (A) As a result of the mental disorder, the child has substantial impairment in at least two of the following areas: self-care, school functioning, family relationships, or ability to function in the community; and either of the following occur:

      (i) The child is at risk of removal from home or has already been removed from the home.
      (ii) The mental disorder and impairments have been present for more than six months or are likely to continue for more than one year without treatment.

   (B) The child displays one of the following: psychotic features, risk of suicide or risk of violence due to a mental disorder.
(C) The child meets special education eligibility requirements under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

4) Requires the benefits provided to include outpatient services, inpatient hospital services, partial hospital services, and prescription drugs (if the plan includes prescription drug coverage). (HSC §1374.72(b), IC §10144.5(b)).

5) Requires that maximum lifetime benefits, copayments, and individual and family deductibles that apply to these benefits have the same terms and conditions as they do for any other benefits under the plan contract. (HSC §1374.72(c), IC §10144.5(c)).

6) Requires that every health care service plan or insurance policy that provides hospital, medical or surgical coverage must also provide coverage for behavioral health treatment for pervasive developmental disorder or autism, by no later than July 1, 2012. (HSC §1374.73(a), IC §10144.51(a))

7) Defines “behavioral health treatment” as professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs which develop or restore the functioning of an individual with pervasive developmental disorder or autism, and meets the following criteria (HSC §1374.73(c), IC §10144.51(c):
   a) Is prescribed by a licensed physician and surgeon or is developed by a licensed psychologist;
   b) Is provided under a treatment plan prescribed by a qualified autism service provider and administered by such a provider or by a qualified professional under supervision of a qualified autism service provider;
   c) The treatment plan has measurable goals over a specific timeline and the plan is reviewed by the provider at least once every six months; and
   d) Is not used for purposes of providing or for the reimbursement of respite, day care, or educational services.

This Bill:

1) Would require every health care service plan contract or health insurance policy issued, amended, or renewed after January 1, 2013, that provides hospital, medical, or surgical coverage must provide coverage for the screening, diagnosis, and treatment of pervasive developmental disorder or autism. (HSC §1374.745(a), IC §10144.53(a))

2) Defines “diagnosis of pervasive development disorder or autism” as medically necessary assessment, evaluations, or tests to diagnose whether one has pervasive development disorder or autism (HSC § 1374.745(i)(1), IC §10144.53(i)(1))

3) Defines “treatment for pervasive developmental disorder or autism” to mean the following care, and necessary equipment, that is ordered and deemed medically necessary by a specified licensed professional for an individual with pervasive development disorder or autism (HSC §1374.745(i)(7), IC§10144.53(i)(7)):
   - Pharmacy care
   - Psychiatric care
• Psychological care
• Therapeutic care

4) Specifies that treatment for pervasive developmental disorder or autism does not include behavioral health treatment. (HSC §1374.745(i)(8), IC §10144.53(i)(8))

5) Prohibits a health care service plan from terminating coverage or refusing to deliver, execute, issue, amend, adjust, or renew coverage to an enrollee or insured solely because that person is diagnosed with or has received treatment for pervasive developmental disorder or autism. (HSC §1374.745(b), IC§10144.53(b))

6) Requires coverage to include all medically necessary services and prohibits any limitations based on age, number of visits, or dollar amounts. (HSC §1374.745(c), IC §10144.53(c))

7) Provisions for lifetime maximums, deductibles, copayments, coinsurance or other terms and conditions for coverage of pervasive developmental disorder or autism must not be less favorable than the provisions that apply to general physical illnesses covered by the plan. (HSC §1374.745(c), IC §10144.53(c))

8) Prohibits coverage for pervasive developmental disorder or autism from being denied on the basis of the location of delivery of the treatment, or because the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature. (HSC §1374.745(d), IC §10144.53(d))

9) Requires a health care service plan and health insurer to establish and maintain an adequate network of service providers, with appropriate training and experience in pervasive developmental disorder or autism so that patients have a choice of providers, timely access, continuity of care, and ready referral to the services required to be provided by this bill. (HSC §1374.745(f), IC §10144.53(f))

10) Provides that on and after January 1, 2014, no benefits are required to be provided that are in excess of federally required essential health benefits as defined by Federal Law. (HSC §1374.745(h), IC §10144.53(h)).

Comments:

1) Author’s Intent. Due to loopholes in current law, those with pervasive development disorder or autism (PDD/A) are frequently denied coverage for their disorder. When they are denied coverage, those with PDD/A must either go without treatment, pay for treatment privately, or spend time appealing health plan and insurer denials. Many with health insurance who are denied coverage for PDD/A seek treatment through Regional Centers, school districts, or counties, shifting the cost burden to the taxpayers. The goal of this bill is to end health care discrimination against those with PDD/A by specifically requiring health plans and insurers to cover screening, diagnosis, and all medically necessary treatment related to the disorder.

2) Expansion of Current Law. Current law requires coverage for the diagnosis and medically necessary treatment of pervasive developmental disorder or autism. However, lack of detail as to the nature of this coverage provides loopholes for insurers to frequently deny coverage for treatments. For example, they may say the treatment is not medically necessary, non-medical, experimental, or educational only. This bill would make the law more explicit about what must be covered.
3) **Previous Legislation.** SB 946 (Chapter 650, Statutes of 2011) was signed into law last fall. It requires, no later than July 1, 2012, that every health care service plan contract that provides hospital, medical, or surgical coverage shall also provide coverage for behavioral health treatment for PDD/A. This bill would expand upon SB 946 by requiring health care service plan contracts and health insurance policies to provide coverage for the screening, diagnosis, and treatment of PDD/A other than behavioral health treatment.

Behavioral health treatment is specifically excluded from this bill because it is already required by law as a result of SB 946 (HSC §1374.73, IC§10144.51). To ensure the author’s intent that behavioral health treatment remain covered, this bill includes the following language:

- **HSC §1374.745(g)(2)** This section shall not be construed as limiting or excluding benefits that are otherwise available to an enrollee under a health care service plan, including, but not limited to, benefits that are required to be covered pursuant to Sections 1374.72 and 1374.73.

- **IC §10144.53(g)(2)** This section shall not be construed as limiting or excluding benefits that are otherwise available to an enrollee under a health insurance policy, including, but not limited to, benefits that are required to be covered under Sections 10144.5 and 10144.51.

4) **Suggested Amendment.** This bill would require insurers to provide coverage for the screening, diagnosis, and treatment of PDD/A. The bill specifically defines “diagnosis of pervasive developmental disorder or autism” and “treatment for pervasive developmental disorder or autism,” citing specific care that these entail. However, there is no definition of “screening of pervasive developmental disorder or autism.” As the purpose of this bill is to close loopholes allowing denial of medically necessary coverage, it is suggested that “screening of autism spectrum disorders” also be specifically defined.

5) **Recommended Position.** This is a 2-year bill. At its meeting on May 18, 2011, the Board took a “support if amended” position on this bill, recommending the bill be amended to define the term “screening of autism spectrum disorders.”

This bill has since been amended to incorporate both minor changes and to account for the recent passage of SB 946.

At its meeting on April 19, 2012, the Policy and Advocacy Committee recommended that the Board take a support position on this bill, and asked that staff work with the author’s office to address some minor technical concerns.

6) **Support and Opposition.**

Support:
- Alliance of California Autism Organizations (sponsor)
- Alameda County Developmental Disabilities Council
- American Association of University Women California
- Area 4 Board, State Council of Developmental Disabilities
- Area 10 Board, State Council of Developmental Disabilities
- Association of Regional Center Agencies
- Autism Deserves Equal Coverage
- Autism Speaks
• California Association of Marriage and Family Therapists
• California Association of School Psychologists
• California Communities United Institute
• California Primary Care Association
• California School Boards Association
• Contra Costa Health Services
• Developmental Disabilities Area Board 10, State of California
• People’s Care
• San Francisco Unified School District
• Solano County Families for Effective Autism Treatment
• State Council on Developmental Disabilities
• The Arc of California
• Several individuals

Oppose:
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• Association of California Life & Health Insurance Companies
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• California Chamber of Commerce

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Apr. 6 From committee chair, with author’s amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
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Jan. 21 From printer. May be heard in committee February 20.
Jan. 20 Read first time. To print.
ASSEMBLY BILL No. 171

Introduced by Assembly Member Beall
(Coauthors: Assembly Members Ammiano, Blumenfield, Brownley, Carter, Chesbro, Eng, Huffman, Mitchell, Swanson, Wieckowski, Williams, and Yamada)

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(1) Existing law provides for licensing and regulation of health care service plans by the Department of Managed Health Care. A willful violation of these provisions is a crime. Existing law provides for licensing and the regulation of health insurers by the Insurance Commissioner. Existing law requires health care service plan contracts and health insurance policies to provide benefits for specified conditions, including certain mental health conditions, coverage for the diagnosis and treatment of severe mental illnesses, including pervasive developmental disorder or autism, under the same terms and conditions applied to other medical conditions, as specified. Commencing July 1, 2012, and until July 1, 2014, existing law requires health care service
plan contracts and health insurance policies to provide coverage for behavioral health treatment, as defined, for pervasive developmental disorder or autism.

This bill would require health care service plan contracts and health insurance policies to provide coverage for the screening, diagnosis, and treatment, other than behavioral health treatment, of autism spectrum disorders pervasive developmental disorder or autism. The bill would, however, provide that no benefits are required to be provided by a health benefit plan offered through the California Health Benefit Exchange that exceed the essential health benefits required under specified federal law. The bill would prohibit coverage from being denied for specified reasons.

State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section-4374.73 1374.745 is added to the Health and Safety Code, to read:

(a) Every health care service plan contract issued, amended, or renewed on or after January 1, 2012 2013, that provides hospital, medical, or surgical coverage shall provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders: pervasive developmental disorder or autism.

(b) A health care service plan shall not terminate coverage, or refuse to deliver, execute, issue, amend, adjust, or renew coverage, to an enrollee solely because the individual is diagnosed with, or
has received treatment for, an autism spectrum disorder pervasive developmental disorder or autism.

(c) Coverage required to be provided under this section shall extend to all medically necessary services and shall not be subject to any limits regarding age, number of visits, or dollar amounts. Coverage required to be provided under this section shall not be subject to provisions relating to lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that are less favorable to an enrollee than lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that apply to physical illness generally under the plan contract.

(d) Coverage required to be provided under this section is a health care service and a covered health care benefit for purposes of this chapter. Coverage shall not be denied on the basis of the location of delivery of the treatment or on the basis that the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature.

(e) A health care service plan may request, no more than once annually, a review of treatment provided to an enrollee for autism spectrum disorders pervasive developmental disorder or autism. The cost of obtaining the review shall be borne by the plan. This subdivision does not apply to inpatient services.

(f) A health care service plan shall establish and maintain an adequate network of qualified autism service providers with appropriate training and experience in autism spectrum disorders pervasive developmental disorder or autism to ensure that enrollees have a choice of providers, and have timely access, continuity of care, and ready referral to all services required to be provided by this section consistent with Sections 1367 and 1367.03 and the regulations adopted pursuant thereto.

(g) (1) This section shall not be construed as reducing any obligation to provide services to an enrollee under an individualized family service plan, an individualized program plan, a prevention program plan, an individualized education program, or an individualized service plan.

(2) This section shall not be construed as limiting or excluding benefits that are otherwise available to an enrollee under a health care service plan, plan, including, but not limited to, benefits that are required to be covered pursuant to Sections 1374.72 and 1374.73.
(3) This section shall not be construed to mean that the services required to be covered pursuant to this section are not required to be covered under other provisions of this chapter.

(4) This section shall not be construed as affecting litigation that is pending on January 1, 2012.

(h) On and after January 1, 2014, to the extent that this section requires health benefits to be provided that exceed the essential health benefits required to be provided under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) by qualified health plans offering those benefits in the California Health Benefit Exchange pursuant to Title 22 (commencing with Section 100500) of the Government Code, the specific benefits that exceed the federally required essential health benefits are not required to be provided when offered by a health care service plan contract through the Exchange. However, those specific benefits are required to be provided if offered by a health care service plan contract outside of the Exchange.

(4) Notwithstanding subdivision (a), on and after January 1, 2014, this section does not require any benefits to be provided that exceed the essential health benefits that all health plans will be required by federal regulations to provide under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).

(i) As used in this section, the following terms shall have the following meanings:

(1) “Autism spectrum disorder” means a neurobiological condition that includes autistic disorder, Asperger’s disorder, Rett’s disorder, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified.

(2) “Behavioral health treatment” means professional services and treatment programs, including behavioral intervention therapy, applied behavioral analysis, and other intensive behavioral programs, that have demonstrated efficacy to develop, maintain, or restore, to the maximum extent practicable, the functioning or quality of life of an individual and that have been demonstrated
to treat the core symptoms associated with autism spectrum disorder.

(3) “Behavioral intervention therapy” means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in behaviors, including the use of direct observation, measurement, and functional analyses of the relationship between environment and behavior.

(4)

(1) “Diagnosis of autism spectrum disorders” pervasive developmental disorder or autism” means medically necessary assessment, evaluations, or tests to diagnose whether an individual has one of the autism spectrum disorders pervasive developmental disorder or autism.

(5) “Evidence-based research” means research that applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.

(2) “Pervasive developmental disorder or autism” shall have the same meaning and interpretation as used in Section 1374.72.

(6)

(3) “Pharmacy care” means medications prescribed by a licensed physician and surgeon or other appropriately licensed or certified provider and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

(7)

(4) “Psychiatric care” means direct or consultative psychiatric services provided by a psychiatrist or any other appropriately licensed or certified provider licensed in the state in which he or she practices.

(8)

(5) “Psychological care” means direct or consultative psychological services provided by a psychologist or any other appropriately licensed or certified provider licensed in the state in which he or she practices.

(9) “Qualified autism service provider” shall include any nationally or state licensed or certified person, entity, or group that designs, supervises, or provides treatment of autism spectrum disorders and the unlicensed personnel supervised by the licensed or certified person, entity, or group, provided the services are within the experience and scope of practice of the licensed or
certified person, entity, or group. “Qualified autism service provider” shall also include any service provider that is vendorized by a regional center to provide those same services for autism spectrum disorders under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code and the unlicensed personnel supervised by that provider, or a State Department of Education nonpublic, nonsectarian agency as defined in Section 56035 of the Education Code approved to provide those same services for autism spectrum disorders and the unlicensed personnel supervised by that agency. A qualified autism service provider shall ensure criminal background screening and fingerprinting, and adequate training and supervision of all personnel utilized to implement services. Any national license or certification recognized by this section shall be accredited by the National Commission for Certifying Agencies (NCCA).

(10)
(6) “Therapeutic care” means services provided by a licensed or certified speech therapists, therapist, an occupational therapist, a physical therapist, or any other appropriately licensed or certified provider therapist.

(11)
(7) “Treatment for autism spectrum disorders” pervasive developmental disorder or autism” means all of the following care, including necessary equipment, that develops, maintains, or restores to the maximum extent practicable the functioning or quality of life of an individual with pervasive developmental disorder or autism and is prescribed or ordered for an individual diagnosed with one of the autism spectrum disorders pervasive developmental disorder or autism by a licensed physician and surgeon or a licensed psychologist or any other appropriately licensed or certified provider who determines the care to be medically necessary:

(A) Behavioral health treatment.

(B) Pharmacy care, if the plan contract includes coverage for prescription drugs.

(C) Psychiatric care.
(C) Psychological care.

(D) Therapeutic care.

(F) Any care for individuals with autism spectrum disorders that is demonstrated, based upon best practices or evidence-based research, to be medically necessary.

(8) “Treatment for pervasive developmental disorder or autism” does not include behavioral health treatment, as defined in Section 1374.73.

(j) This section, with the exception of subdivision (b), shall not apply to dental-only or vision-only health care service plan contracts.

SEC. 2. Section 10144.51 10144.53 is added to the Insurance Code, to read:

10144.51. 10144.53. (a) Every health insurance policy issued, amended, or renewed on or after January 1, 2012, 2013, that provides hospital, medical, or surgical coverage shall provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders.

(b) A health insurer shall not terminate coverage, or refuse to deliver, execute, issue, amend, adjust, or renew coverage, to an insured solely because the individual is diagnosed with, or has received treatment for, an autism spectrum disorder.

(c) Coverage required to be provided under this section shall extend to all medically necessary services and shall not be subject to any limits regarding age, number of visits, or dollar amounts. Coverage required to be provided under this section shall not be subject to provisions relating to lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that are less favorable to an insured than lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that apply to physical illness generally under the policy.

(d) Coverage required to be provided under this section is a health care service and a covered health care benefit for purposes of this part. Coverage shall not be denied on the basis of the location of delivery of the treatment or on the basis that the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature.
(e) A health insurer may request, no more than once annually, a review of treatment provided to an insured for autism spectrum disorders, pervasive developmental disorder or autism. The cost of obtaining the review shall be borne by the insurer. This subdivision does not apply to inpatient services.

(f) A health insurer shall establish and maintain an adequate network of qualified autism service providers with appropriate training and experience in autism spectrum disorders, pervasive developmental disorder or autism to ensure that insureds have a choice of providers, and have timely access, continuity of care, and ready referral to all services required to be provided by this section consistent with Sections 10133.5 and 10133.55 and the regulations adopted pursuant thereto.

(g) (1) This section shall not be construed as reducing any obligation to provide services to an insured under an individualized family service plan, an individualized program plan, a prevention program plan, an individualized education program, or an individualized service plan.

(2) This section shall not be construed as limiting or excluding benefits that are otherwise available to an enrollee under a health insurance policy, including, but not limited to, benefits that are required to be covered under Sections 10144.5 and 10144.51.

(3) This section shall not be construed to mean that the services required to be covered pursuant to this section are not required to be covered under other provisions of this chapter.

(4) This section shall not be construed as affecting litigation that is pending on January 1, 2012.

(h) On and after January 1, 2014, to the extent that this section requires health benefits to be provided that exceed the essential health benefits required to be provided under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) by qualified health plans offering those benefits in the California Health Benefit Exchange pursuant to Title 22 (commencing with Section 100500) of the Government Code, the specific benefits that exceed the federally required essential health benefits are not required to be provided when offered by a health insurance policy through the Exchange. However, those specific benefits are
required to be provided if offered by a health insurance policy outside of the Exchange.

(h) Notwithstanding subdivision (a), on and after January 1, 2014, this section does not require any benefits to be provided that exceed the essential health benefits that all health plans will be required by federal regulations to provide under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).

(i) As used in this section, the following terms shall have the following meanings:

(1) “Autism spectrum disorder” means a neurobiological condition that includes autistic disorder, Asperger’s disorder, Rett’s disorder, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified.

(2) “Behavioral health treatment” means professional services and treatment programs, including behavioral intervention therapy, applied behavioral analysis, and other intensive behavioral programs, that have demonstrated efficacy to develop, maintain, or restore, to the maximum extent practicable, the functioning or quality of life of an individual and that have been demonstrated to treat the core symptoms associated with autism spectrum disorder.

(3) “Behavioral intervention therapy” means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in behaviors, including the use of direct observation, measurement, and functional analyses of the relationship between environment and behavior.

(4)

(1) “Diagnosis of autism spectrum disorders” pervasive developmental disorder or autism” means medically necessary assessment, evaluations, or tests to diagnose whether an individual has one of the autism spectrum disorders pervasive developmental disorder or autism.

(5) “Evidence-based research” means research that applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.

(2) “Pervasive developmental disorder or autism” shall have the same meaning and interpretation as used in Section 1374.72.
(6) “Pharmacy care” means medications prescribed by a licensed physician and surgeon or other appropriately licensed or certified provider and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

(7) “Psychiatric care” means direct or consultative psychiatric services provided by a psychiatrist or any other appropriately licensed or certified provider licensed in the state in which he or she practices.

(8) “Psychological care” means direct or consultative psychological services provided by a psychologist or any other appropriately licensed or certified provider licensed in the state in which he or she practices.

(9) “Qualified autism service provider” shall include any nationally or state licensed or certified person, entity, or group that designs, supervises, or provides treatment of autism spectrum disorders and the unlicensed personnel supervised by the licensed or certified person, entity, or group, provided the services are within the experience and scope of practice of the licensed or certified person, entity, or group. “Qualified autism service provider” shall also include any service provider that is vendorized by a regional center to provide those same services for autism spectrum disorders under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code and the unlicensed personnel supervised by that provider, or a State Department of Education nonpublic, nonsectarian agency as defined in Section 56035 of the Education Code approved to provide those same services for autism spectrum disorders and the unlicensed personnel supervised by that agency. A qualified autism service provider shall ensure criminal background screening and fingerprinting, and adequate training and supervision of all personnel utilized to implement services. Any national license or certification recognized by this section shall be accredited by the National Commission for Certifying Agencies (NCCA).

(10) “Therapeutic care” means services provided by a licensed or certified speech therapists, therapist, an occupational therapists,
therapist, or a physical therapist or any other appropriately licensed or certified provider.

(11) “Treatment for autism spectrum disorders” pervasive developmental disorder or autism” means all of the following care, including necessary equipment, that develops, maintains, or restores to the maximum extent practicable the functioning or quality of life of an individual with pervasive developmental disorder or autism and is prescribed or ordered for an individual diagnosed with one of the autism spectrum disorders pervasive developmental disorder or autism by a licensed physician and surgeon or a licensed psychologist or any other appropriately licensed or certified provider who determines the care to be medically necessary:

(A) Behavioral health treatment.
(B) Pharmacy care, if the policy includes coverage for prescription drugs.
(C) Psychiatric care.
(D) Psychological care.
(E) Therapeutic care.
(F) Any care for individuals with autism spectrum disorders that is demonstrated, based upon best practices or evidence-based research, to be medically necessary.

(8) “Treatment for pervasive developmental disorder or autism” does not include behavioral health treatment, as defined in Section 10144.51.

(j) This section, with the exception of subdivision (b), shall not apply to dental-only or vision-only health insurance policies.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California Constitution.
Existing Law:

1) Requires certain boards to report the name and license number of a person whose license has been revoked, suspended, surrendered, or made inactive to the State Department of Health Care Services within ten working days. (Business and Professions Code (BPC) §683)

2) Names the following boards as subject to these reporting requirements (BPC §683):
   - Dental Board of California;
   - Medical Board of California;
   - Board of Psychology;
   - State Board of Optometry;
   - California State Board of Pharmacy;
   - Osteopathic Medical Board of California;
   - State Board of Chiropractic Examiners; and
   - California Board of Occupational Therapy.

3) States that the purpose of the reporting requirements is to prevent state reimbursement for Medi-Cal services that were provided after the cancellation of a license. (BPC §683)

This Bill:

1) Adds the Board of Behavioral Sciences (Board) to the list of boards subject to the reporting requirements. (BPC §683(b))

Comment:

1) Background. The Department of Health Care Services (DHCS) is responsible for administering several individual health care service delivery programs, including the Medi-Cal program, and helps fund hospitals and clinics in underserved areas. The purpose of these programs is to provide a health safety net to California’s low income and disabled residents. The purpose of the reporting requirements in current law is to prevent providers who are no longer licensed to practice from being reimbursed by DHCS for their services.
2) **Author’s Intent.** According to the author’s office, the intent of this legislation is to prevent Medi-Cal fraud by Board licensees who may provide services that are eligible for Medi-Cal reimbursement, by requiring the Board to report to DHCS the name and license number of any license holder whose license is revoked.

3) **Delayed Implementation Requested.** The Department of Consumer Affairs (DCA) is in the process of implementing a new database system, called BreEZe, for its boards and bureaus. Implementation of the BreEZe system for this Board is scheduled for August 2012. However, any new program changes made between now and January 1, 2015 must be made by the BreEZe vendor, at significant additional cost to the Board. Therefore, Board staff requests consideration of a delayed implementation date of January 1, 2015. At this point the department will retain control of the BreEZe system and will be able to make changes to the system internally.

4) **Recommended Position:** At its meeting on April 19, 2012, the Policy and Advocacy Committee recommended that the Board support this bill if its implementation is delayed until January 1, 2015 in order to accommodate the BreEZe system.

5) **Support and Opposition.**

   **Support:**
   
   • California Association of Marriage & Family Therapists (Sponsor)

   **Opposition:**

   • None

6) **History**

   **2012**
   Feb. 16 Referred to Com. on B., P. & E.D.
   Jan. 26 In Senate. Read first time. To Com. on RLS. for assignment.
   Jan. 23 Read second time. Ordered to consent calendar.
   Jan. 10 From committee: Do pass and re-refer to Com. on APPR. with recommendation: to consent calendar. (Ayes 8. Noes 0.) (January 10). Re-referred to Com. on APPR.
   Jan. 4 From committee chair, with author's amendments: Amend, and re-refer to Com. on AGING & L.T.C. Read second time and amended. Re-referred to Com. on AGING & L.T.C. Re-referred to Com. on B., P. & C.P. pursuant to Assembly Rule 96.

   **2011**
   Apr. 12 In committee: Set, first hearing. Hearing canceled at the request of author.
   Mar. 22 From committee: Do pass and re-refer to Com. on AGING & L.T.C. with recommendation: to consent calendar. (Ayes 7. Noes 0.) (March 22). Re-referred to Com. on AGING & L.T.C.
   Mar. 3 Referred to Coms. on PUB. S. and AGING & L.T.C.
   Feb. 15 From printer. May be heard in committee March 17.
   Feb. 14 Read first time. To print.
Introduced by Assembly Member Smyth

February 14, 2011

An act to add Section 15631.5 to the Welfare and Institutions Code, relating to elder abuse. An act to amend, repeal, and add Section 683 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL’S DIGEST


Under existing law, the Board of Behavioral Sciences is responsible for the licensure and regulation of marriage and family therapists, licensed educational psychologists, clinical social workers, and licensed professional clinical counselors. Existing law requires certain healing arts boards to report to the State Department of Health Care Services specified licensure information relating to any person whose license has been revoked, suspended, surrendered, or made inactive by the licensee in order to prevent state reimbursement for services provided after the cancellation of a license.

This bill would, on and after July 1, 2013, make that reporting requirement applicable to the Board of Behavioral Sciences.

The Elder Abuse and Dependent Adult Civil Protection Act establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse, and the failure of a mandated reporter to report physical abuse and financial abuse of an elder or dependent adult under
the act is a misdemeanor. The act requires the mandated reporter to report the abuse to the adult protective services agency or the local law enforcement agency if the abuse occurs anywhere other than a long-term facility.

The act permits a person who is not a mandated reporter who knows; or reasonably suspects, that an elder or dependent adult has been the victim of abuse in a place other than a long-term care facility to report that abuse to the county adult protective services agency or the local law enforcement agency.

This bill would require a county adult protective services agency or a local law enforcement agency to accept a report by a mandated reporter, or any other person, of suspected elder or dependent adult abuse even if the agency lacks jurisdiction to investigate the report, unless the call can be immediately transferred to an agency with proper jurisdiction. This bill would also require a county adult protective services agency or a local law enforcement agency that lacks jurisdiction to immediately refer the report of suspected abuse by telephone, facsimile, or electronic transmission to an agency with proper jurisdiction. By requiring county adult protective services agencies and local law enforcement agencies to provide a higher level of service, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state; reimbursement for those costs shall be made pursuant to these statutory provisions.


The people of the State of California do enact as follows:

1 SECTION 1. Section 683 of the Business and Professions Code is amended to read:
2 683. (a) A board shall report, within 10 working days, to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive by the licensee, or placed in another category that prohibits the licensee from practicing his or her
profession. The purpose of the reporting requirement is to prevent reimbursement by the state for Medi-Cal and Denti-Cal services provided after the cancellation of a provider’s professional license.

(b) “Board,” as used in this section, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, and the California Board of Occupational Therapy.

(c) This section shall become inoperative on July 1, 2013, and, as of January 1, 2014, is repealed, unless a later enacted statute that is enacted before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 683 is added to the Business and Professions Code, to read:

683. (a) A board shall report, within 10 working days, to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive by the licensee, or placed in another category that prohibits the licensee from practicing his or her profession. The purpose of the reporting requirement is to prevent reimbursement by the state for Medi-Cal and Denti-Cal services provided after the cancellation of a provider’s professional license.

(b) “Board,” as used in this section, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Behavioral Sciences, and the California Board of Occupational Therapy.

(c) This section shall become operative on July 1, 2013.

SECTION 1. Section 15631.5 is added to the Welfare and Institutions Code, to read:

15631.5. Reports of suspected elder or dependent adult abuse pursuant to either subparagraph (C) of paragraph (1) of subdivision (b) of Section 15630 or subdivision (b) of Section 15631 may be made to any county adult protective services agency or local law enforcement agency. Any county adult protective services agency or local law enforcement agency shall accept the report of suspected elder or dependent adult abuse even if the agency to
whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the county adult protective services agency or the local law enforcement agency can immediately transfer the call reporting suspected elder or dependent adult abuse to a county adult protective services agency or a local law enforcement agency with proper jurisdiction. If a county adult protective services agency or a local law enforcement agency accepts a report about a case of suspected elder or dependent adult abuse in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, facsimile, or electronic transmission to a county adult protective services agency or a local law enforcement agency with proper jurisdiction.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 1588 VERSION: AMENDED MARCH 5, 2012

AUTHOR: ATKINS SPONSOR: AUTHOR

RECOMMENDED POSITION: SUPPORT IF AMENDED

SUBJECT: PROFESSIONS AND VOCATIONS: RESERVIST LICENSEES: FEES AND CONTINUING EDUCATION

Existing Law:

1) Allows a licensee or registrant of any board, commission, or bureau within the Department of Consumer Affairs (DCA) to reinstate his or her license without examination or penalty if the license expired while he or she was on active duty with the California National Guard or the United States Armed Forces. The following conditions must be met (Business and Professions Code (BPC §114(a)):

a) The license or registration must have been valid at the time of entrance into the California National Guard or the United States Armed Forces.

b) The application for reinstatement must be made while actively serving, or no later than one year from the date of discharge from active service or return to inactive military status; and

c) The applicant must submit an affidavit stating the date of entrance into the service, whether still in the service or the date of discharge, and he or she must also submit the renewal fee for the current renewal period.

2) Allows a licensee of the Board to submit a written request for a continuing education exemption if he or she was absent from the state of California due to military service for at least one year during the previous renewal period. The licensee must submit evidence of service and must submit the request for exemption at least 60 days prior to the license expiration date. (Section 1887.2(d) of Title 16 of the California Code of Regulations (CCR))

This Bill:

1) Requires all boards, commissions, or bureaus within DCA to waive continuing education requirements and renewal fees for a licensee or registrant while called to active duty as a member of the United States Military Reserve or the California National Guard if the following requirements are met (BPC §114.3):

a) The person’s license or registration was in good standing at the time they were called to active duty;
b) The renewal fees and continuing education requirements are only waived for the period that they are on active duty; and

c) The licensee or registrant, or their spouse or domestic partner, provide the Board with acceptable written notice of the active duty.

Comments:

1) **Author’s Intent.** This bill is intended to prevent members of the military from being penalized if they allow their professional license to fall into delinquency during their service period. According to the author’s office, “military professionals should not be expected to pay to renew an expensive license or fulfill continuing education requirements for a professional license they cannot use while on active duty.”

2) **Current Renewal Fee Policy.** The Board does not currently waive renewal fees if a licensee is called to active military duty. A licensee called to active military duty may choose to renew their license to an inactive status. An inactive status is valid for two years and requires payment of an inactive license fee that is approximately one-half of the standard license renewal fee. There is no inactive status option for a registration.

3) **Current Continuing Education Policy.** The Board may waive a licensee’s continuing education requirement if he or she was absent from the state of California due to active military service for at least one year during the previous renewal period. The licensee must request the exemption on a form prescribed by the Board at least 60 days before his or her license expires. Under the new proposal, the Board would be required to waive the continuing education requirement, and there would be no 60 day notice requirement, as long as the licensee or registrant provided acceptable written notice of active duty.

4) **Number of Licensees Affected:** The Board does not currently track the number of licensees who are members of the military. However, for the past several years, the Board has tracked the number of licensees who have requested a continuing education exemption due to military service. This is typically a very small number, as summarized below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Licensees Requesting a CE Exemption Due to Military Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>1</td>
</tr>
<tr>
<td>2011</td>
<td>0</td>
</tr>
<tr>
<td>2010</td>
<td>1</td>
</tr>
<tr>
<td>2009</td>
<td>1</td>
</tr>
<tr>
<td>2008</td>
<td>0</td>
</tr>
<tr>
<td>2007</td>
<td>1</td>
</tr>
<tr>
<td>2006</td>
<td>5</td>
</tr>
</tbody>
</table>

5) **Board of Psychology.** The Board of Psychology’s licensing law allows for a waiver of the renewal fee when a licensee is in full-time active service in the Army, Navy, Air Force, Marines, United States Public Health Service, the Peace Corps, or Vista. This section of the Board of Psychology licensing law is detailed in Attachment A.

6) **Previous Legislation.** The California Military Families Financial Relief Act was passed by the Legislature in 2005 (AB 1666, Frommer, Chapter 345, Statutes of 2005). One of the provisions of this bill required the State Bar of California to waive membership fees of a service member while they are called into active duty if certain requirements are met. This bill is modeled after that provision.
7) **Time Limit To Pay Renewal Fee After Active Status Complete.** Staff suggests an amendment setting a time limit by which the renewal fee must be paid once the licensee or registrant completes active service. The Medical Board currently has a renewal fee exemption for its licensees if they are engaging in active military status (BPC §2440, shown in [Attachment B](#)). This code states that a Medical Board licensee becomes liable for payment of the fee for the current renewal period upon discharge from full time active service, and has 60 days after discharge to pay the renewal fee before a delinquency fee is charged. However, any Medical Board licensee who is discharged within 60 days of the end of a renewal period is exempt from paying a fee for that renewal period.

8) **Suggested Amendment.** Currently, this bill only requires the active duty reservist, or his or her spouse or domestic partner, to provide written notice to the Board substantiating the active duty service. Staff suggests an amendment specifying that the term “written notice” be replaced by the term “affidavit.” The proposed amendment would read as follows:

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(c) The active duty reservist, or the active duty reservist's spouse or registered domestic partner, provides written notice satisfactory to the board, commission, or bureau that substantiates the reservist's active duty service.
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Making this amendment clarifies the type of written notice to be provided to the Board, and is consistent with current statute which requires an affidavit stating the dates of active service of a licensee who applies for reinstatement of an expired license or registration after active service.

9) **Recommended Position.** At its April 19, 2012 meeting, the Policy and Advocacy Committee recommended that the Board take a “support if amended” position on this bill, requesting the bill be amended to include a time limit to pay the renewal fee once active service is complete, and replacing the term “written notice” with “affidavit.” The Committee also directed staff to do further research regarding the current policy of the Board of Psychology, as well as research regarding whether this bill would require additional costs to modify the new BreEZe database system.

10) **Support and Opposition.**

**Support:**
- Veterans of Foreign Wars of the United States, Department of California
- American Federation of State, County and Municipal Employees
- American Nurses Association California
- Hearing Health Care Providers of California

**Opposition:**
- None

11) **History**

2012  
Mar. 28 In committee: Set, first hearing. Referred to APPR. suspense file.  
Mar. 13 From committee: Do pass and re-refer to Com. on APPR. (Ayes 8, Noes 0.) (March 13). Re-referred to Com. on APPR.
Mar. 6 Re-referred to Com. on B., P. & C.P.
Mar. 5 From committee chair, with author's amendments: Amend, and re-refer to Com. on B., P. & C.P. Read second time and amended.
Feb. 17 Referred to Com. on B., P. & C.P.
Feb. 7 From printer. May be heard in committee March 8.
Feb. 6 Read first time. To print.

12) Attachments

- **Attachment A**: Business and Professions Code Section 2987.5 (Board of Psychology Renewal Fee Exemption Licensing Law for Certain Service Members)

- **Attachment B**: Business and Professions Code Section 2440 (Medical Board Renewal Fee Exemption Licensing Law for Active Military Service)
Introducing Assembly Bill No. 1588

Introduced by Assembly Member Atkins
(Principal coauthors: Assembly Members Cook and Nielsen)
(Coauthors: Assembly Members Block, Beth Gaines, Pan,
V. Manuel Pérez, Williams, and Yamada)

February 6, 2012

An act to add Section 114.3 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1588, as amended, Atkins. Professions and vocations: reservist licensees: fees and continuing education.

Existing law provides for the regulation of various professions and vocations by boards, commissions, or bureaus within the Department of Consumer Affairs and for the licensure or registration of individuals in that regard. Existing law authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard or the United States Armed Forces to reinstate his or her license without examination or penalty if certain requirements are met.

This bill would require the boards, commissions, or bureaus described above to waive the renewal fees and continuing education requirements, if either is applicable, of any licensee or registrant who is a reservist called to active duty as a member of the United States Military Reserve or the California National Guard if certain requirements are met.

The people of the State of California do enact as follows:

SECTION 1. Section 114.3 is added to the Business and Professions Code, to read:

114.3. Notwithstanding any other provision of law, every board, commission, or bureau within the department shall waive the renewal fees and continuing education requirements, if either is applicable, for any licensee or registrant who is a reservist called to active duty as a member of the United States Military Reserve or the California National Guard if all of the following requirements are met:

(a) The licensee or registrant was in good standing with the board, commission, or bureau at the time the reservist was called to active duty.

(b) The renewal fees or continuing education requirements are waived only for the period during which the reservist is on active duty service.

(c) The active duty reservist, or the active duty reservist’s spouse or registered domestic partner, provides written notice satisfactory to the board, commission, or bureau that substantiates the reservist’s active duty service.
2987.5. Every person licensed under this chapter is exempt from the payment of the renewal fee in any one of the following instances:

While engaged in full-time active service in the Army, Navy, Air Force or Marines, or in the United States Public Health Service, or while a volunteer in the Peace Corps or Vista.

Every person exempted from the payment of the renewal fee by this section shall not engage in any private practice and shall become liable for the fee for the current renewal period upon the completion of his or her period of full-time active service and shall have a period of 60 days after becoming liable within which to pay the fee before the delinquency fee becomes applicable. Any person who completes his or her period of full-time active service within 60 days of the end of a renewal period is exempt from the payment of the renewal fee for that period.

The time spent in that full-time active service or full-time training and active service shall not be included in the computation of the three-year period for renewal of a license provided in Section 2986.

The exemption provided by this section shall not be applicable if the person engages in any practice for compensation other than full-time service in the Army, Navy, Air Force or Marines or in the United States Public Health Service or the Peace Corps or Vista.
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2440. (a) Every licensee is exempt from the payment of the renewal fee while engaged in full-time training or active service in the Army, Navy, Air Force, or Marines, or in the United States Public Health Service.

(b) Every person exempted from the payment of the renewal fee by this section shall not engage in any private practice and shall become liable for payment of such fee for the current renewal period upon his or her discharge from full-time active service and shall have a period of 60 days after becoming liable within which to pay the renewal fee before the delinquency fee is required. Any person who is discharged from active service within 60 days of the end of a renewal period is exempt from the payment of the renewal fee for that period.

(c) The time spent in full-time active service or training shall not be included in the computation of the five-year period for renewal and reinstatement of licensure provided in Sections 2427 and 2428.

(d) Nothing in this section shall exempt a person, exempt from renewal fees under this section, from meeting the requirements of Article 10 (commencing with Section 2190).
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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES
BILL ANALYSIS

BILL NUMBER: AB 1785 VERSION: INTRODUCED FEBRUARY 21, 2012
AUTHOR: B. LOWENTHAL SPONSOR: CALIFORNIA ASSOCIATION OF MARRIAGE AND FAMILY THERAPISTS (CAMFT)

RECOMMENDED POSITION: SUPPORT

SUBJECT: MEDI-CAL: FEDERALLY QUALIFIED HEALTH CENTERS AND RURAL HEALTH CLINICS

Existing Law:

1) Establishes that federally qualified health center services (FQHCs) and rural health clinic (RHC) services are covered Medi-Cal benefits that are reimbursed on a per-visit basis. (Welfare and Institutions Code (WIC) §14132.100(c))

2) Defines a FQHC or RHC visit as a face-to-face encounter between an FQHC or RHC patient and one of the following (WIC §14132.100(g))
   - A physician;
   - physician assistant;
   - nurse practitioner;
   - certified nurse-midwife;
   - clinical psychologist;
   - licensed clinical social worker;
   - visiting nurse; or
   - dental hygienist.

This Bill:

1) Would add a marriage and family therapist to the list of health care professionals included in the definition of a visit to a FQHC or RHC that is eligible for Medi-Cal reimbursement. (WIC §14132.100(g)(1))

Comments:

1) Author’s Intent. The intent of this legislation is to allow federally qualified health centers and rural health clinics to be able to hire a marriage and family therapist and be reimbursed through Medi-Cal for covered mental health services. Under current law, only clinical psychologists or licensed clinical social workers may receive Medi-Cal reimbursement for covered services in such settings. According to the author’s office, the inability to receive
Medi-Cal reimbursement serves as a disincentive for a FQHC or a RHC to consider hiring a marriage and family therapist.

2) **Inclusion of LPCCs.** This amendment leaves out the Board's newest license type, licensed professional clinical counselors (LPCCs). The Board began issuing LPCC licenses and registrations in early 2012. Because LPCCs also practice psychotherapy, the Board may want to recommend that they be included as well.

3) **Suggested Amendment.** Staff suggests an amendment be made to include the word "licensed" in front of the term "marriage and family therapist" in §14132.100(g)(1). This will clarify that the marriage and family therapist must be licensed by the Board, and it is consistent with the use of the term "licensed clinical social worker" in that code section. In addition, it is also consistent with the Board’s August 18, 2011 decision that the title “Licensed Marriage and Family Therapist” be utilized in all new regulatory and legislative proposals.

4) **Recommended Position.** At its meeting on April 19, 2012, the Policy and Advocacy Committee recommended that the Board take a support position on this bill.

5) **Support and Opposition.**

Support:
- The California Association of Marriage and Family Therapists (Sponsor)
- California Commission on Aging
- California Council of Community Mental Health Agencies
- California Family Resource Association
- California Primary Care Association
- California State Association of Counties

Oppose:
- National Association of Social Workers, California Chapter

6) **History**

2012
Apr. 18 In committee: Set, first hearing. Referred to APPR. suspense file.
Apr. 11 From committee: Do pass and re-refer to Com. on APPR. (Ayes 17. Noes 0.) (April 10). Re-referred to Com. on APPR.
Mar. 1 Referred to Com. on HEALTH.
Feb. 22 From printer. May be heard in committee March 23.
Feb. 21 Read first time. To print.
ASSEMBLY BILL No. 1785

Introduced by Assembly Member Bonnie Lowenthal

February 21, 2012

An act to amend Section 14132.100 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL’S DIGEST

AB 1785, as introduced, Bonnie Lowenthal. Medi-Cal: federally qualified health centers: rural health clinics.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law provides that federally qualified health center services and rural health clinic services, as defined, are covered benefits under the Medi-Cal program, to be reimbursed, to the extent that federal financial participation is obtained, to providers on a per-visit basis. “Visit” is defined as a face-to-face encounter between a patient of a federally qualified health center or a rural health clinic and specified health care professionals.

This bill would include a marriage and family therapist within those health care professionals covered under that definition.

The people of the State of California do enact as follows:

SECTION 1. Section 14132.100 of the Welfare and Institutions Code is amended to read:

14132.100. (a) The federally qualified health center services described in Section 1396d(a)(2)(C) of Title 42 of the United States Code are covered benefits.

(b) The rural health clinic services described in Section 1396d(a)(2)(B) of Title 42 of the United States Code are covered benefits.

(c) Federally qualified health center services and rural health clinic services shall be reimbursed on a per-visit basis in accordance with the definition of “visit” set forth in subdivision (g).

(d) Effective October 1, 2004, and on each October 1, thereafter, until no longer required by federal law, federally qualified health center (FQHC) and rural health clinic (RHC) per-visit rates shall be increased by the Medicare Economic Index applicable to primary care services in the manner provided for in Section 1396a(bb)(3)(A) of Title 42 of the United States Code. Prior to January 1, 2004, FQHC and RHC per-visit rates shall be adjusted by the Medicare Economic Index in accordance with the methodology set forth in the state plan in effect on October 1, 2001.

(e) (1) An FQHC or RHC may apply for an adjustment to its per-visit rate based on a change in the scope of services provided by the FQHC or RHC. Rate changes based on a change in the scope of services provided by an FQHC or RHC shall be evaluated in accordance with Medicare reasonable cost principles, as set forth in Part 413 (commencing with Section 413.1) of Title 42 of the Code of Federal Regulations, or its successor.

(2) Subject to the conditions set forth in subparagraphs (A) to (D), inclusive, of paragraph (3), a change in scope of service means any of the following:

(A) The addition of a new FQHC or RHC service that is not incorporated in the baseline prospective payment system (PPS) rate, or a deletion of an FQHC or RHC service that is incorporated in the baseline PPS rate.

(B) A change in service due to amended regulatory requirements or rules.
(C) A change in service resulting from relocating or remodeling an FQHC or RHC.

(D) A change in types of services due to a change in applicable technology and medical practice utilized by the center or clinic.

(E) An increase in service intensity attributable to changes in the types of patients served, including, but not limited to, populations with HIV or AIDS, or other chronic diseases, or homeless, elderly, migrant, or other special populations.

(F) Any changes in any of the services described in subdivision (a) or (b), or in the provider mix of an FQHC or RHC or one of its sites.

(G) Changes in operating costs attributable to capital expenditures associated with a modification of the scope of any of the services described in subdivision (a) or (b), including new or expanded service facilities, regulatory compliance, or changes in technology or medical practices at the center or clinic.

(H) Indirect medical education adjustments and a direct graduate medical education payment that reflects the costs of providing teaching services to interns and residents.

(I) Any changes in the scope of a project approved by the federal Health Resources and Service Administration (HRSA).

(3) No change in costs shall, in and of itself, be considered a scope-of-service change unless all of the following apply:

(A) The increase or decrease in cost is attributable to an increase or decrease in the scope of services defined in subdivisions (a) and (b), as applicable.

(B) The cost is allowable under Medicare reasonable cost principles set forth in Part 413 (commencing with Section 413) of Subchapter B of Chapter 4 of Title 42 of the Code of Federal Regulations, or its successor.

(C) The change in the scope of services is a change in the type, intensity, duration, or amount of services, or any combination thereof.

(D) The net change in the FQHC’s or RHC’s rate equals or exceeds 1.75 percent for the affected FQHC or RHC site. For FQHCs and RHCs that filed consolidated cost reports for multiple sites to establish the initial prospective payment reimbursement rate, the 1.75-percent threshold shall be applied to the average per-visit rate of all sites for the purposes of calculating the cost associated with a scope-of-service change. “Net change” means
the per-visit rate change attributable to the cumulative effect of all increases and decreases for a particular fiscal year.

(4) An FQHC or RHC may submit requests for scope-of-service changes once per fiscal year, only within 90 days following the beginning of the FQHC’s or RHC’s fiscal year. Any approved increase or decrease in the provider’s rate shall be retroactive to the beginning of the FQHC’s or RHC’s fiscal year in which the request is submitted.

(5) An FQHC or RHC shall submit a scope-of-service rate change request within 90 days of the beginning of any FQHC or RHC fiscal year occurring after the effective date of this section, if, during the FQHC’s or RHC’s prior fiscal year, the FQHC or RHC experienced a decrease in the scope of services provided that the FQHC or RHC either knew or should have known would have resulted in a significantly lower per-visit rate. If an FQHC or RHC discontinues providing onsite pharmacy or dental services, it shall submit a scope-of-service rate change request within 90 days of the beginning of the following fiscal year. The rate change shall be effective as provided for in paragraph (4). As used in this paragraph, “significantly lower” means an average per-visit rate decrease in excess of 2.5 percent.

(6) Notwithstanding paragraph (4), if the approved scope-of-service change or changes were initially implemented on or after the first day of an FQHC’s or RHC’s fiscal year ending in calendar year 2001, but before the adoption and issuance of written instructions for applying for a scope-of-service change, the adjusted reimbursement rate for that scope-of-service change shall be made retroactive to the date the scope-of-service change was initially implemented. Scope-of-service changes under this paragraph shall be required to be submitted within the later of 150 days after the adoption and issuance of the written instructions by the department, or 150 days after the end of the FQHC’s or RHC’s fiscal year ending in 2003.

(7) All references in this subdivision to “fiscal year” shall be construed to be references to the fiscal year of the individual FQHC or RHC, as the case may be.

(f) (1) An FQHC or RHC may request a supplemental payment if extraordinary circumstances beyond the control of the FQHC or RHC occur after December 31, 2001, and PPS payments are insufficient due to these extraordinary circumstances. Supplemental
payments arising from extraordinary circumstances under this subdivision shall be solely and exclusively within the discretion of the department and shall not be subject to subdivision (l). These supplemental payments shall be determined separately from the scope-of-service adjustments described in subdivision (e). Extraordinary circumstances include, but are not limited to, acts of nature, changes in applicable requirements in the Health and Safety Code, changes in applicable licensure requirements, and changes in applicable rules or regulations. Mere inflation of costs alone, absent extraordinary circumstances, shall not be grounds for supplemental payment. If an FQHC’s or RHC’s PPS rate is sufficient to cover its overall costs, including those associated with the extraordinary circumstances, then a supplemental payment is not warranted.

(2) The department shall accept requests for supplemental payment at any time throughout the prospective payment rate year.

(3) Requests for supplemental payments shall be submitted in writing to the department and shall set forth the reasons for the request. Each request shall be accompanied by sufficient documentation to enable the department to act upon the request. Documentation shall include the data necessary to demonstrate that the circumstances for which supplemental payment is requested meet the requirements set forth in this section. Documentation shall include all of the following:

(A) A presentation of data to demonstrate reasons for the FQHC’s or RHC’s request for a supplemental payment.

(B) Documentation showing the cost implications. The cost impact shall be material and significant, two hundred thousand dollars ($200,000) or 1 percent of a facility’s total costs, whichever is less.

(4) A request shall be submitted for each affected year.

(5) Amounts granted for supplemental payment requests shall be paid as lump-sum amounts for those years and not as revised PPS rates, and shall be repaid by the FQHC or RHC to the extent that it is not expended for the specified purposes.

(6) The department shall notify the provider of the department’s discretionary decision in writing.

(g) (1) An FQHC or RHC “visit” means a face-to-face encounter between an FQHC or RHC patient and a physician, physician assistant, nurse practitioner, certified nurse-midwife,
clinical psychologist, licensed clinical social worker, *marriage and family therapist*, or a visiting nurse. For purposes of this section, “physician” shall be interpreted in a manner consistent with the Centers for Medicare and Medicaid Services’ Medicare Rural Health Clinic and Federally Qualified Health Center Manual (Publication 27), or its successor, only to the extent that it defines the professionals whose services are reimbursable on a per-visit basis and not as to the types of services that these professionals may render during these visits and shall include a physician and surgeon, podiatrist, dentist, optometrist, and chiropractor. A visit shall also include a face-to-face encounter between an FQHC or RHC patient and a comprehensive perinatal services practitioner, as defined in Section 51179.1 of Title 22 of the California Code of Regulations, providing comprehensive perinatal services, a four-hour day of attendance at an adult day health care center, and any other provider identified in the state plan’s definition of an FQHC or RHC visit.

(2) (A) A visit shall also include a face-to-face encounter between an FQHC or RHC patient and a dental hygienist or a dental hygienist in alternative practice.

(B) Notwithstanding subdivision (e), an FQHC or RHC that currently includes the cost of the services of a dental hygienist in alternative practice for the purposes of establishing its FQHC or RHC rate shall apply for an adjustment to its per-visit rate, and, after the rate adjustment has been approved by the department, shall bill these services as a separate visit. However, multiple encounters with dental professionals that take place on the same day shall constitute a single visit. The department shall develop the appropriate forms to determine which FQHC’s or RHC rates shall be adjusted and to facilitate the calculation of the adjusted rates. An FQHC’s or RHC’s application for, or the department’s approval of, a rate adjustment pursuant to this subparagraph shall not constitute a change in scope of service within the meaning of subdivision (e). An FQHC or RHC that applies for an adjustment to its rate pursuant to this subparagraph may continue to bill for all other FQHC or RHC visits at its existing per-visit rate, subject to reconciliation, until the rate adjustment for visits between an FQHC or RHC patient and a dental hygienist or a dental hygienist in alternative practice has been approved. Any approved increase or decrease in the provider’s rate shall be made within six months.
after the date of receipt of the department’s rate adjustment forms pursuant to this subparagraph and shall be retroactive to the beginning of the fiscal year in which the FQHC or RHC submits the request, but in no case shall the effective date be earlier than January 1, 2008.

(C) An FQHC or RHC that does not provide dental hygienist or dental hygienist in alternative practice services, and later elects to add these services, shall process the addition of these services as a change in scope of service pursuant to subdivision (e).

(h) If FQHC or RHC services are partially reimbursed by a third-party payer, such as a managed care entity (as defined in Section 1396u-2(a)(1)(B) of Title 42 of the United States Code), the Medicare Program, or the Child Health and Disability Prevention (CHDP) program, the department shall reimburse an FQHC or RHC for the difference between its per-visit PPS rate and receipts from other plans or programs on a contract-by-contract basis and not in the aggregate, and may not include managed care financial incentive payments that are required by federal law to be excluded from the calculation.

(i) (1) An entity that first qualifies as an FQHC or RHC in the year 2001 or later, a newly licensed facility at a new location added to an existing FQHC or RHC, and any entity that is an existing FQHC or RHC that is relocated to a new site shall each have its reimbursement rate established in accordance with one of the following methods, as selected by the FQHC or RHC:

(A) The rate may be calculated on a per-visit basis in an amount that is equal to the average of the per-visit rates of three comparable FQHCs or RHCs located in the same or adjacent area with a similar caseload.

(B) In the absence of three comparable FQHCs or RHCs with a similar caseload, the rate may be calculated on a per-visit basis in an amount that is equal to the average of the per-visit rates of three comparable FQHCs or RHCs located in the same or an adjacent service area, or in a reasonably similar geographic area with respect to relevant social, health care, and economic characteristics.

(C) At a new entity’s one-time election, the department shall establish a reimbursement rate, calculated on a per-visit basis, that is equal to 100 percent of the projected allowable costs to the FQHC or RHC of furnishing FQHC or RHC services during the
first 12 months of operation as an FQHC or RHC. After the first
12-month period, the projected per-visit rate shall be increased by
the Medicare Economic Index then in effect. The projected
allowable costs for the first 12 months shall be cost settled and the
prospective payment reimbursement rate shall be adjusted based
on actual and allowable cost per visit.

(D) The department may adopt any further and additional
methods of setting reimbursement rates for newly qualified FQHCs
or RHCs as are consistent with Section 1396a(bb)(4) of Title 42
of the United States Code.

(2) In order for an FQHC or RHC to establish the comparability
of its caseload for purposes of subparagraph (A) or (B) of paragraph
(1), the department shall require that the FQHC or RHC submit
its most recent annual utilization report as submitted to the Office
of Statewide Health Planning and Development, unless the FQHC
or RHC was not required to file an annual utilization report. FQHCs
or RHCs that have experienced changes in their services or
caseload subsequent to the filing of the annual utilization report
may submit to the department a completed report in the format
applicable to the prior calendar year. FQHCs or RHCs that have
not previously submitted an annual utilization report shall submit
to the department a completed report in the format applicable to
the prior calendar year. The FQHC or RHC shall not be required
to submit the annual utilization report for the comparable FQHCs
or RHCs to the department, but shall be required to identify the
comparable FQHCs or RHCs.

(3) The rate for any newly qualified entity set forth under this
subdivision shall be effective retroactively to the later of the date
that the entity was first qualified by the applicable federal agency
as an FQHC or RHC, the date a new facility at a new location was
added to an existing FQHC or RHC, or the date on which an
existing FQHC or RHC was relocated to a new site. The FQHC
or RHC shall be permitted to continue billing for Medi-Cal covered
benefits on a fee-for-service basis until it is informed of its
enrollment as an FQHC or RHC, and the department shall reconcile
the difference between the fee-for-service payments and the
FQHC’s or RHC’s prospective payment rate at that time.

(j) Visits occurring at an intermittent clinic site, as defined in
subdivision (h) of Section 1206 of the Health and Safety Code, of
an existing FQHC or RHC, or in a mobile unit as defined by
paragraph (2) of subdivision (b) of Section 1765.105 of the Health and Safety Code, shall be billed by and reimbursed at the same rate as the FQHC or RHC establishing the intermittent clinic site or the mobile unit, subject to the right of the FQHC or RHC to request a scope-of-service adjustment to the rate.

(k) An FQHC or RHC may elect to have pharmacy or dental services reimbursed on a fee-for-service basis, utilizing the current fee schedules established for those services. These costs shall be adjusted out of the FQHC’s or RHC’s clinic base rate as scope-of-service changes. An FQHC or RHC that reverses its election under this subdivision shall revert to its prior rate, subject to an increase to account for all MEI increases occurring during the intervening time period, and subject to any increase or decrease associated with applicable scope-of-services adjustments as provided in subdivision (e).

(l) FQHCs and RHCs may appeal a grievance or complaint concerning ratesetting, scope-of-service changes, and settlement of cost report audits, in the manner prescribed by Section 14171. The rights and remedies provided under this subdivision are cumulative to the rights and remedies available under all other provisions of law of this state.

(m) The department shall, by no later than March 30, 2008, promptly seek all necessary federal approvals in order to implement this section, including any amendments to the state plan. To the extent that any element or requirement of this section is not approved, the department shall submit a request to the federal Centers for Medicare and Medicaid Services for any waivers that would be necessary to implement this section.

(n) The department shall implement this section only to the extent that federal financial participation is obtained.
Existing Law:

1. Specifies that in the case of a court petition, application, or other pleading to obtain or modify child custody or visitation that is being contested, the court shall set the contested issues for mediation. (Family Code (FC) §3170(a))

2. States the purposes of a mediation proceeding are as follows: (FC § 3161)
   a. To reduce acrimony that may exist between the parties.
   b. To develop an agreement assuring the child close and continuing contact with both parents that is in the best interest of the child.
   c. To settle the issue of visitation rights of all parties in a manner that is in the best interest of the child.

3. States that mediation of cases involving custody and visitation concerning children is governed by uniform standards of practice adopted by the judicial council. (FC §3162)

4. Allows a court to require parents or any other party involved in a custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, for not more than one year if the court makes the following findings (FC §3190(a)):
   a. The dispute between the parties seeking custody or visitation rights with the child poses a substantial danger to the best interest of the child.
   b. The counseling is in the best interest of the child.

5. Requires the outpatient counseling with a mental health professional to be specifically designed to do the following (FC §3191):
   a. Facilitate communication between the parties regarding the child's best interest.
   b. Reduce conflict regarding custody or visitation.
   c. Improve the quality of parenting skills of each parent.
6. States that a child custody evaluator must be a licensed marriage and family therapist, licensed clinical social worker, or other specified licensed professional or certified evaluator. (FC §3110.5(c))

7. States that a child custody evaluator licensed by the Board is subject to disciplinary action by the Board for unprofessional conduct. (FC §3110.5(e))

8. Defines an evaluator as a supervising or associate counselor, a mediator, a child custody evaluator, or a court appointed investigator or evaluator. (FC §1816)

This Bill:

1. Prohibits monetary liability or damages against a professional appointed by court order to provide services to the court in a child custody or visitation case or appointed by a court order to provide expert evidence. The prohibition extends to any act, opinion, report, or communication in the performance of the court ordered services as long it is in the scope of services and occurs during the provision of those services (Civil Code (CC) § 43.100)

Comment:

1) Author’s Intent. According to the Author, California family courts regularly appoint lawyers, social workers, marriage and family therapists, psychiatrists, or other professionals to serve as neutral fact-finders or expert witnesses. They provide the court with expert testimony or written reports to enable the court to make informed decisions.

While acting as a court appointed neutral professional for these purposes, these professionals are sometimes subject to attack in contentious family or custody disputes. Because they are working under a code of conduct as a court appointee that may be different from the code of conduct of their licensed profession, they risk facing duplicative but potentially inconsistent disciplinary proceedings. Additionally, because these professionals are licensed by different agencies, one type of professional may not be held to the exact same code of conduct as another professional, even if they are performing identical duties for the court.

As a result of this situation, many qualified professionals are no longer willing to take appointments by family courts.

2) Clarification of Immunity. As written, this bill states that no professional appointed by court order to provide services in a child custody case or appointed by the court to provide expert evidence is liable financially or liable for damages, as long as it the act in question is within the scope of the appointed services and occurs during the provision of the appointed services.

However, a licensed mental health professional that is not acting in a mediator role may be acting under the jurisdiction of the Board. For example, Family Code sections 3190 and 3191 allow the court to require parties of a child custody or visitation dispute to participate in counseling with a licensed mental health professional. A Board licensee acting as a mental health professional may fall under the jurisdiction of the Board if psychotherapy is performed. In addition, the Family Code section 3110.5 specifies that a court-connected or private child custody evaluator that is licensed by the Board is subject to disciplinary action by the Board for unprofessional conduct.
This bill does not clearly address court-connected child custody evaluators or licensed mental health professionals who are providing certain court ordered psychotherapeutic services.

3) **Previous Deputy Attorney General Opinion.** In 2003, the Board’s then-deputy attorney general issued an informal opinion that when acting in the capacity of a court appointed child custody mediator/evaluator, the Board does not have jurisdiction based upon the fact that neither the setting nor the services provided are clinical or psychotherapeutic services for which a Board license is required. Therefore, persons being seen by the licensee acting as a mediator or evaluator do not have a psychotherapist client or patient relationship with the mediator/evaluator, even if that person is a licensed psychotherapist.

4) **Recommended Position:** At its meeting on April 19, 2012, the Policy and Advocacy Committee recommended that the Board take an oppose position on this bill.

5) **Support and Opposition.**
   - **Support:** None on file.
   - **Opposition:** None on file.

6) **History**

   2012
   - Mar. 1 Referred to Com. on JUD.
   - Feb. 23 From printer. May be heard in committee March 24.
   - Feb. 22 Read first time. To print.
An act to add Section 43.100 to the Civil Code, relating to immunity.

LEGISLATIVE COUNSEL’S DIGEST

AB 1864, as introduced, Wagner. Immunity: court-appointed professionals.

Existing law authorizes the court, if it appears that expert evidence is or may be required by the court or any party to the action, to appoint one or more experts to investigate, to render a report, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required, as specified.

Existing law governs family law proceedings. Existing law authorizes or requires, as specified, the court to appoint various professionals to assist in these proceedings, including counsel for the minor, mediators, and child custody evaluators, among others.

This bill would prohibit any monetary liability on the part of, and any cause of action for damages against, any professional appointed by court order to provide services to the court pursuant to the provisions described above, as an expert witness or in connection with family law proceedings, for any act, opinion, report, or communication in the performance of those services, as specified.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature in enacting this act to codify, as public policy, the holding of Howard v. Drapkin (1990) 222 Cal.App.3d 843, and to extend the protection and immunity from civil litigation for damages to all professionals appointed by the court pursuant to Part 2 (commencing with Section 3020) of Division 8 of the Family Code or Section 730 of the Evidence Code.

SEC. 2. Section 43.100 is added to the Civil Code, to read:

43.100. In addition to the privilege afforded by Section 47, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional appointed by court order to provide services to the court pursuant to Part 2 (commencing with Section 3020) of Division 8 of the Family Code, or for any professional appointed by court order to provide services pursuant to Section 730 of the Evidence Code, for any act, opinion, report, or communication in the performance of those services, if the act, opinion, report, or communication is within the scope of those services and occurs during the provision of those services.
Existing Law:

1) Allows the Board to issue a license as a marriage and family therapist (LMFT) to a person who, at the time of application, holds a valid license issued by another state if that person has held that license for at least two years, if their education and experience is substantially equivalent to that required by the Board, passes specified Board-administered licensing examinations, and completes certain specified training or coursework. (Business and Professions Code (BPC) §4980.80)

2) Allows the Board to issue a license as an educational psychologist (LEP) if the applicant has certain specified education and experience requirements, and passes a Board-administered examination. (BPC §4989.20)

3) Allows the Board to issue a clinical social worker license (LCSW) to a person who, at the time of application, holds a valid active clinical social work license in another state if that person has supervised experience that is substantially equivalent to that required by the Board (unless licensed for at least four years), passes specified Board-administered licensing examinations, and completes certain specified training or coursework. (BPC §4996.17)

4) Allows the Board to issue a professional clinical counselor license (LPCC) to a person who, at the time of application, holds a valid license as a professional clinical counselor in another jurisdiction if their education and experience is substantially equivalent to that required by the Board, and if the person passes a Board administered California Law and Ethics Examination as well as the National Clinical Mental Health Counselor Examination (NCMHCE). (BPC §§ 4999.53, 4999.58, 4999.59, 4999.60)

This Bill:

1) Allows a Board within the Department of Consumer Affairs (DCA) to issue a temporary license to an applicant who can prove that he or she is married to or in a domestic partnership or other legal union with, an active duty member of the U.S. Armed Forces who is assigned to duty in California under official active duty military orders. The applicant must meet the following conditions (Business and Professions Code (Business and Professions Code (BPC) §115.5(a)):

   a. Holds a current license in another state whose requirements are determined by the Board to be substantially equivalent to the Board’s licensure requirements;
b. Has not committed any act in any jurisdiction that would have constituted
grounds for denial, suspension, or revocation of the license by the Board;

c. Has not been disciplined by another licensing entity and is not the subject of any
unresolved complaint or disciplinary proceeding by another licensing entity;

d. Pays the fees required by the Board; and

e. Submits fingerprints and fingerprinting fee as required by the Board.

2) Requires the Board to expedite this temporary licensing process. (BPC §115.5(b))

3) States that a temporary license is valid for 180 days, but at the discretion of the Board, may
be extended for an additional 180 days if the licensee holder applies for an extension. (BPC
§115.5(c))

4) Allows the Board to adopt regulations to administer the temporary license program. (BPC
§115.5(d))

Comments:

1) **Author’s Intent.** The author’s office notes that the process of obtaining a state license can
cause re-employment delays for military spouses moving between states, and that because
of these delays and the expense involved in re-licensure, many of these spouses decide not
to practice their profession. They also note that this financial and career-related issue may
impact military members’ decisions to stay in the military.

This bill is part of a larger federal effort to improve the lives of military families. In February
2012, the U.S. Treasury and the U.S. Department of Defense issued a report titled
“Supporting our Military Families: Best Practices for Streamlining Occupational Licensing
Across State Lines.” This report noted that approximately 35 percent of military spouses
work in professions that require state licensure or certification, and recommended the use of
temporary licenses to be used to accommodate qualified military spouses while they work
toward a permanent license.

2) **Current Board Process.** The Board does not currently have a temporary license status. An
applicant who has an out of state license can submit an application for examination
eligibility. The Board will evaluate the application to ensure the applicant meets the Board’s
education and experience requirements. If the Board determines that they meet all of the
requirements, the Board will deem the applicant eligible to take the required examinations.
Upon passage of the Board-required examinations, the Board will issue a license.

The average time it typically takes for the Board to evaluate an examination eligibility
application for the four license types over the past several years is summarized below.
Average Processing Time for Examination Eligibility Applications (in Days)

<table>
<thead>
<tr>
<th>License Type</th>
<th>Average Processing Time (Days)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2008</td>
</tr>
<tr>
<td>LMFT</td>
<td>38</td>
</tr>
<tr>
<td>LCSW</td>
<td>58</td>
</tr>
<tr>
<td>LEP</td>
<td>67</td>
</tr>
</tbody>
</table>

Over the past year, due to furloughs and the State hiring freeze, the Board has experienced a significant increase in processing times. However, as of February 2012, the Board is now fully staffed for the first time since June 2010. The Board expects to be able to significantly reduce the delays in the evaluation of examination eligibility applications, and hopes to be able to return to a processing time of two months or less for most license types, typical of previous years.

3) **Discretion Left To Board.** This bill states that a board may issue a temporary license to a military spouse under certain conditions. It later states that the board shall expedite the procedure for issuing a temporary license. As written, it is up to the Board to decide whether or not to issue these temporary licenses, but if it does decide to issue them, they must be expedited.

4) **Expediting Licenses.** The Board does not currently have a process to expedite licenses. Past suggestions of expediting license in certain circumstances have raised concern among staff, Board members, and the associations that expediting license benefits some but displaces other licensees. It would also take additional staff time to identify which applications require expedition.

5) **Passage of Licensing Examinations.** As written, this bill requires that the military spouse hold a current license in another state that the Board determines has substantially equivalent licensing requirements. It says nothing about passage of required Board administered examinations. Each of the Board’s four license types is currently required to pass at least one Board-administered examination. Passage of a Board-administered examination ensures that a candidate for licensure has competencies unique to the mental health environment in California. Allowing mental health professionals from other states that have not passed an examination tailored to address the unique mental health environment in California could jeopardize consumer protection.

6) **Continuity of Care.** This bill creates a temporary license that is valid for a six month period, with the opportunity to extend the license for a 1 year period. A consumer who seeks mental health services often seeks treatment for an extended period of time. Having a practitioner whose license is only valid for six months could disrupt the continuity of care for their patients.

7) **Recommended Position.** At its meeting on April 19, 2012, the Policy and Advocacy Committee recommended the Board take a support position on this bill.
8) Support and Opposition.

**Support:**
- Department of Defense State Liaison Office

**Opposition:**
- None on file.

9) History

2012
 Apr. 18 In committee: Set, first hearing. Referred to APPR. suspense file.
 Mar. 27 From committee: Do pass and re-refer to Com. on APPR. (Ayes 9,
 Noes 0) (March 27). Re-referred to Com. on APPR.
 Mar. 8 Referred to Com. on B., P. & C.P.
 Feb. 23 From printer. May be heard in committee March 24.
 Feb. 22 Read first time. To print.

ASSEMBLY BILL No. 1904

Introduced by Assembly Members Block, Butler, and Cook

February 22, 2012

An act to add Section 115.5 to the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL’S DIGEST

AB 1904, as introduced, Block. Professions and vocations: military spouses: temporary licenses.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law provides for the issuance of reciprocal licenses in certain fields where the applicant, among other requirements, has a license to practice within that field in another jurisdiction, as specified. Under existing law, licensing fees imposed by certain boards within the department are deposited in funds that are continuously appropriated.

This bill would authorize a board within the department to issue a temporary license to an applicant who, among other requirements, holds an equivalent license in another jurisdiction, as specified, and is married to, or in a legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders. The bill would require a board to expedite the process for issuing these temporary licenses. The bill would require the applicant to pay any fees required by the board and would require that those fees be deposited in the fund used by the board to administer its licensing program. To the extent that the bill would
increase the amount of money deposited into a continuously appropriated fund, the bill would make an appropriation.


The people of the State of California do enact as follows:

SECTION 1. Section 115.5 is added to the Business and Professions Code, to read:
115.5. (a) A board within the department may issue a temporary license to an applicant who meets all of the following requirements:
(1) Submits an application in the manner prescribed by the board.
(2) Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.
(3) Holds a current license in another state, district, or territory of the United States with the requirements that the board determines are substantially equivalent to those established under this code for that occupation.
(4) Has not committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license under this code at the time the act was committed.
(5) Has not been disciplined by a licensing entity in another jurisdiction and is not the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.
(6) Pays any fees required by the board. Those fees shall be deposited in the applicable fund or account used by the board to administer its licensing program.
(7) Submits fingerprints and any applicable fingerprinting fee in the manner required of an applicant for a regular license.
(b) A board shall expedite the procedure for issuing a temporary license pursuant to this section.
(c) A temporary license issued under this section shall be valid for 180 days, except that the license may, at the discretion of the
board, be extended for an additional 180-day period on application of the license holder.

(d) A board may adopt regulations necessary to administer this section.
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Supporting our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines

February 2012

“We’re redoubling our efforts to help military spouses pursue their educations and careers... We’re going to help spouses get that degree, find that job, or start that new business. We want every company in America to know our military spouses and veterans have the skills and the dedication, and our nation is more competitive when we tap their incredible talents.”

- President Barack Obama, January 24, 2011
The President and his administration have taken the initiative to make the care and well-being of our nation’s veterans, service members, and military families a priority across all agencies of the government. Last year, the President unveiled *Strengthening Our Military Families: Meeting America’s Commitment* – a document that outlined the commitment of 16 separate agencies to 47 initiatives designed to improve the lives of military families. First Lady Michelle Obama and Dr. Jill Biden have also made it their personal priority to support our nation’s veterans, service members, and military families through their Joining Forces initiative.

As a result of the President’s advocacy, and in response to conversations that the First Lady and Dr. Biden have had with military spouses, the Departments of Treasury and Defense have co-authored this report to highlight the impact of state occupational licensing requirements on the careers of military spouses. The report shows that military spouses are especially affected by state occupational licensing requirements. About 35 percent of military spouses work in professions that require state licenses or certification. They move across state lines far more frequently than the general population. These moves present administrative and financial challenges, as illustrated in a case study of nursing licensing requirements. The report identifies best practices that states and licensing bodies can adopt through legislation, as well as current Department of Defense initiatives that address this issue.

We believe the best practices described in this report provide a baseline for further improvements, and hope it is a call to action to support our military spouses while still maintaining professional standards that ensure public safety. We are asking state governments, licensing boards, and professional associations to join us in finding more efficient ways for military spouses and other mobile professionals to fulfill these state and professional licensing and certification requirements.

Our military spouses support the well-being and safety of our nation, and we can best appreciate their sacrifices and unique challenges by adopting practices that lessen the burdens of their frequent moves. They have a compelling need and we are suggesting tangible solutions. All that is needed is the willingness to take action.
Executive Summary

On January 24, 2011, President Obama, First Lady Michelle Obama, and Dr. Jill Biden presented Strengthening Our Military Families: Meeting America’s Commitment – a document that responded to the Presidential Study Directive calling on all Cabinet Secretaries and other agency heads to find better ways to provide our military families with the support they deserve. The directive was initiated to establish a coordinated and comprehensive federal approach to supporting military families, and it contains nearly 50 commitments by federal agencies in pursuit of this goal.

State licensing and certification requirements are intended to ensure that practitioners meet a minimum level of competency. Because each state sets its own licensing requirements, these requirements often vary across state lines. Consequently, the lack of license portability – the ability to transfer an existing license to a new state with minimal application requirements – can impose significant administrative and financial burdens on licensed professionals when they move across state lines. Because military spouses hold occupational licenses and often move across state lines, the patchwork set of variable and frequently time-consuming licensing requirements across states disproportionately affect these families. The result is that too many military spouses looking for jobs that require licenses are stymied in their efforts.

A spouse’s employment plays a key role in the financial and personal well-being of military families, and their job satisfaction is an important component of the retention of service members. Without adequate support for military spouses and their career objectives, the military could have trouble retaining service members.

The Department of the Treasury and the Department of Defense (DoD) have conducted an analysis to highlight the importance of state occupational licensing requirements in the lives of licensed military spouses. The report demonstrates that military spouses often work in occupations that require a license or certification and that they have a relatively high rate of interstate mobility compared to the general population. The report also examines a case study of nursing licensing requirements to illustrate the administrative and financial burdens that licensed military spouses face when they move across state lines, and highlights current DoD initiatives that address these licensing issues. Finally, the report identifies best practices that states and licensing bodies can adopt to help reduce barriers for military spouses moving across state lines.

This report finds that:

- Nearly 35 percent of military spouses in the labor force require licenses or certification for their profession.
- Military spouses are ten times more likely to have moved across state lines in the last year compared to their civilian counterparts.
In a 2008 Defense Manpower Data Center (DMDC) survey of military spouses, participants were asked what would have helped them with their employment search after their last military move. Nearly 40 percent of those respondents who had moved indicated that “easier state-to-state transfer of certification” would have helped them.

This report highlights best practices that states can pursue to help licensed military spouses. These best practices to help make licenses more portable come at little cost to states, but could make a meaningful difference in the lives of many military families. These best practices include:

- **Facilitating endorsement of a current license** from another jurisdiction as long as the requirements for licensure in that jurisdiction are substantially equivalent to those in the licensing state, and the applicant:
  
  - Has not committed any offenses that would be grounds for suspension or revocation of the license in the other jurisdiction, and is otherwise in good standing in that jurisdiction; and

  - Can demonstrate competency in the occupation through methods as determined by the Board, such as having completed continuing education units, having had sufficient recent experience (in a full or part time, paid or volunteer position), or by working under supervision for a prescribed period.

- **Providing a temporary or provisional license** allowing the military spouse to practice while fulfilling requirements needed to qualify for endorsement in the licensing state, or awaiting verification of documentation supporting an endorsement. Temporary licenses should require minimum documentation, such as proof of holding a current license in good standing and marriage to an active duty Service member who is assigned to the state.
*Expediting application procedures* so that:

- The director overseeing licensing within the state has authority to approve license applications for the boards; and/or

- The individual licensing boards have authority to approve a license based simply on an affidavit from the applicant that the information provided on the application is true and that verifying documentation has been requested.

DoD, through the DoD-State Liaison Office (DSLO), has an on-going program to address key issues with state policymakers. This program, USA4 Military Families, covers 10 key issues, including occupational licensing and eligibility for unemployment compensation benefits. As of February 2012, thirteen states have introduced bills addressing the aforementioned best practices, and DSLO is working with these legislators. Although DoD continues to work on these issues on behalf of military spouses, more work remains to be done.
Military spouses not only play an enormous role in supporting our armed forces, but they also endure recurring absences of their service member spouse, frequent relocations, and extended periods of single-parenting and isolation from friends and family.\textsuperscript{1} Research suggests that the effects of these challenging circumstances can be mitigated by employment. Unfortunately, military spouses earn less than their civilian counterparts and are less likely to be employed, on average.\textsuperscript{ii,iii} A RAND study found that nearly two-thirds of military spouses felt that being a military spouse negatively affected their opportunity to work because of the “frequent and disruptive moves” associated with a military lifestyle.\textsuperscript{iv}

Research on military spouses finds that employment positively affects their general well-being – both directly and indirectly. Specifically, satisfaction with career development prospects has a direct and statistically significant effect on military spouses’ well-being.\textsuperscript{vi} However, many military spouses are not satisfied with their career prospects. One military spouse said, “as time passes and I am unable to find work, my career dies and I feel like I have to abandon my personal and professional goals because my spouse is [the] military.”\textsuperscript{vii} Although many military families depend on two incomes, they often face difficulties in career maintenance: “having to leave an excellent job behind, be unemployed for months, then underemployed…all of this affects our family’s finances.”\textsuperscript{viii}

Military spouse employment and the associated financial and personal well-being is also an important component of the retention of service members. More than half of all active duty military personnel are married, and 91 percent of employed military spouses indicated that they wanted to work and/or needed to work.\textsuperscript{ix} Research suggests that spouse dissatisfaction with the ability to pursue career objectives may hinder re-enlistment. Not only are military spouses highly influential regarding re-enlistment decisions, but more than two-thirds of married service members reported that their decision to re-enlist was largely or moderately affected by their spouses’ career prospects.\textsuperscript{x}

Complicated state occupational licensing requirements contribute to the difficulties that spouses of military personnel face in the workforce. State licensing and certification requirements are intended to ensure that practitioners meet a minimum level of competency and to help “protect the public from unqualified providers.”\textsuperscript{xi,xii} Because each state sets its own licensing requirements, these requirements often vary across state lines. Consequently, the lack of license portability – the ability to transfer an existing license to a new

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### CIVILIAN SPOUSES OF ACTIVE DUTY SERVICE MEMBERS

**Number:** 612,709  
- Army: (40%)  
- Navy: (24%)  
- Marine Corps: (13%)  
- Air Force: (24%)

**Gender:**  
- Female: 95%  
- Male: 5%

**Average age:** 32  
Average years married: 7.8 years

**Race/Ethnicity:**  
- Non-Hispanic White: 68%  
- Non-Hispanic Black: 9%  
- Hispanic: 12%

**Education:**  
- No College: 16%  
- Some College: 49%  
- Bachelor’s Degree: 25%  
- Advanced Degree: 10%

**Employment:**  
- Labor participation rate: 57%  
- Unemployment rate: 26%

**Age of Children:**  
- Have children 5 & under: 54%  
- Have children 6-12: 30%  
- Have children 13-17: 15%

*72% have children
Military spouses have expressed their frustration with the lack of licensing portability. According to a May 2010 survey of military spouses conducted by Blue Star Families, a military family support group, almost half of respondents felt that being a military spouse negatively affected their ability to pursue a career, while one in five respondents cited difficulties arising from the lack of licensing portability. One military spouse said, “moving from one state to another, with different licensing requirements, has been a challenge. My career, while fairly portable, has still been difficult to maintain.” Another military spouse, a real estate broker, explained the challenges of transferring licenses when she and her husband moved across state lines:

I was a real estate broker in North Carolina when I met my husband. When we [moved] to Texas, my license was no longer valid...In order to reinstate my license, I would have had to attend Texas real estate school and pay Texas licensure fees. The cost to get my license and restart my business would have been more than I could have earned in the 18 months we lived there before [moving] to Kentucky. In Kentucky, I would have had to do it all over again.

Given the volunteer nature of our military, the sacrifices military families make for this country, and the importance of retaining these families to maintain the readiness of our military, ensuring that licensing procedures do not needlessly hinder military spouses is critically important.

The first section of this report uses the Current Population Survey to demonstrate that military spouses often work in occupations that require a license or certification and that they have a relatively high rate of interstate mobility compared to the general population. The second section illustrates the administrative and financial burdens that military spouses face when they move across state lines by examining a case study of nursing licensing requirements. Finally, the third section highlights current DoD initiatives that address these licensing issues and discusses best practices that states and licensing bodies can adopt to help reduce barriers for military spouses moving across state lines.
**Part 1: Licensing and Mobility**

This section uses data from the Annual Social and Economic (ASEC) supplement of the Current Population Survey (CPS) to demonstrate that military spouses often work in state licensed occupations and that they have a relatively high rate of interstate mobility compared to the general population. The CPS is the basis for official government labor force statistics, including the unemployment rate. While the CPS does not survey military barracks, the data do include civilian spouses of service members even if they live on-base in civilian housing.

We constructed a sample of approximately 2,800 spouses of active duty, Guard and Reserve service members, by combining CPS labor force data from 2007 through 2011. Table 1 presents summary statistics for our sample of military spouses. Due to data constraints, we exclude dual-military families (in which both spouses are enlisted) from the analysis. About 95 percent of military spouses in our sample are female, which is consistent with personnel data from DoD.

**Table 1: Gender and Population Estimate of Military Spouses**

<table>
<thead>
<tr>
<th></th>
<th>Population estimate</th>
<th>Sample size</th>
<th>Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women</td>
<td>670,280</td>
<td>2,609</td>
<td>94.2%</td>
</tr>
<tr>
<td>Men</td>
<td>43,511</td>
<td>162</td>
<td>5.8%</td>
</tr>
</tbody>
</table>

Notes: Annual averages based on pooled 2007 through 2011 data from the ASEC supplement of the CPS.

Table 2 presents labor force statistics for military spouses and civilian spouses. Data from the CPS show that the labor force participation rate for military spouses has been about 57 percent over the past five years, with an unemployment rate of 9.3 percent.

**Table 2: Labor Force Participation and Unemployment Rate of Military and Civilian Spouses**

<table>
<thead>
<tr>
<th></th>
<th>Military Spouses</th>
<th>Civilian Spouses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor Force Participation Rate</td>
<td>56.8%</td>
<td>72.8%</td>
</tr>
<tr>
<td>Unemployment Rate</td>
<td>9.3%</td>
<td>4.9%</td>
</tr>
</tbody>
</table>

Notes: Annual averages based on pooled 2007 through 2011 data from the ASEC supplement of the CPS. Civilian spouse statistics are weighted to be comparable with the gender distribution of military spouses. Data are restricted to respondents aged 18 to 45.

Table 3 presents educational attainment for military spouses and civilian spouses using CPS data. Almost 44 percent of military spouses have “some college” but not a four-year degree, compared to 28 percent of civilian spouses. “Some college” includes receiving a degree or certificate from a community college or other short-term training program. In our sample, 38 percent of civilian spouses have at least a bachelor’s degree, compared to 31 percent of military spouses.
Table 3: Educational Attainment of Military and Civilian Spouses

<table>
<thead>
<tr>
<th>Educational Attainment</th>
<th>Military Spouses</th>
<th>Civilian Spouses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than high school</td>
<td>2.9%</td>
<td>9.9%</td>
</tr>
<tr>
<td>High school diploma (or equiv.)</td>
<td>22.7%</td>
<td>24.9%</td>
</tr>
<tr>
<td>Some college</td>
<td>43.4%</td>
<td>27.8%</td>
</tr>
<tr>
<td>Bachelor’s degree or higher</td>
<td>31.0%</td>
<td>37.3%</td>
</tr>
</tbody>
</table>

Notes: Averages based on pooled 2007 through 2011 data from the ASEC supplement of the CPS. Civilian spouse statistics are weighted to be comparable with the gender distribution of military spouses. Data are restricted to respondents aged 18 to 45.

Occupations of Military Spouses

Table 4 presents the top 20 occupations among our sample of military spouses. Teaching is the most common occupation among military spouses, followed by child care services, and nursing. While many of the common occupations among military spouses are not licensed, some of the most popular professions, including teaching and nursing, do require licensure.

In a 2008 Defense Manpower Data Center survey of active duty military spouses, participants were asked what would have helped them with their employment search after their last military move. Nearly 40 percent of those respondents who had moved indicated that “easier state-to-state transfer of certification” would have helped them. This is not surprising given that a third of the respondents had “recently been employed” in an occupation with potential licensure requirements, and nearly half of the respondents suggested that they were interested in pursuing careers in licensed fields. These responses are consistent with our findings in the CPS, which suggest that nearly 35 percent of military spouses in the labor force require licenses or certification for their profession.
Table 4: Top 20 Occupations for Military Spouses in the Labor Force

<table>
<thead>
<tr>
<th>Rank</th>
<th>Occupation</th>
<th>Percent of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Teachers (Pre-Kindergarten - 12th Grade)**</td>
<td>5.2</td>
</tr>
<tr>
<td>2</td>
<td>Child care workers*</td>
<td>3.9</td>
</tr>
<tr>
<td>3</td>
<td>Registered nurses**</td>
<td>3.7</td>
</tr>
<tr>
<td>4</td>
<td>Retail salespersons</td>
<td>3.6</td>
</tr>
<tr>
<td>5</td>
<td>Secretaries and administrative assistants</td>
<td>3.5</td>
</tr>
<tr>
<td>6</td>
<td>Waiters and waitresses</td>
<td>3.0</td>
</tr>
<tr>
<td>7</td>
<td>Receptionists and information clerks</td>
<td>2.8</td>
</tr>
<tr>
<td>8</td>
<td>Cashiers</td>
<td>2.8</td>
</tr>
<tr>
<td>9</td>
<td>First-line supervisors/managers of retail sales workers</td>
<td>2.5</td>
</tr>
<tr>
<td>10</td>
<td>Customer service representatives</td>
<td>1.8</td>
</tr>
<tr>
<td>11</td>
<td>First-line supervisors/managers of office and administrative support workers</td>
<td>1.6</td>
</tr>
<tr>
<td>12</td>
<td>Accountants and auditors**</td>
<td>1.6</td>
</tr>
<tr>
<td>13</td>
<td>Nursing, psychiatric, and home health aides*</td>
<td>1.5</td>
</tr>
<tr>
<td>14</td>
<td>Managers, all other</td>
<td>1.3</td>
</tr>
<tr>
<td>15</td>
<td>Tellers</td>
<td>1.3</td>
</tr>
<tr>
<td>16</td>
<td>Dental assistants*</td>
<td>1.2</td>
</tr>
<tr>
<td>17</td>
<td>Financial managers</td>
<td>1.2</td>
</tr>
<tr>
<td>18</td>
<td>Postsecondary teachers</td>
<td>1.2</td>
</tr>
<tr>
<td>19</td>
<td>Stock clerks and order fillers</td>
<td>1.2</td>
</tr>
<tr>
<td>20</td>
<td>Other teachers and instructors</td>
<td>1.2</td>
</tr>
</tbody>
</table>

Memo

Other categories 53.9

Notes: Annual averages based on pooled 2007 through 2011 data from the ASEC supplement of the CPS. Data include unemployed workers. Double asterisks (**) denote occupations that require licenses; single asterisk (*) denotes occupations that have certification.

Military Spouse Mobility

The ASEC supplement also asks respondents if they moved in the past year. Military spouses are approximately ten times more likely to have moved across state lines in the last year compared to the total population. Table 5 presents mobility rates for military spouses and for the total population. On average, 15 percent of military spouses reported moving across state lines in the twelve months before the CPS survey, compared to only 1.5 percent of all CPS respondents.
### Table 5: Annual Percent of Adult Population Who Moved Across State Lines

<table>
<thead>
<tr>
<th></th>
<th>Percent Moved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Military Spouse</td>
<td>15.2</td>
</tr>
<tr>
<td>Civilian Spouse</td>
<td>1.1</td>
</tr>
<tr>
<td>Single / Unmarried</td>
<td>1.8</td>
</tr>
<tr>
<td>Memo</td>
<td></td>
</tr>
<tr>
<td>All households</td>
<td>1.5</td>
</tr>
</tbody>
</table>

**Notes:** Annual averages based on pooled 2007 through 2011 data from the ASEC supplement of the CPS, but reflect relocation in the year before the survey. Those who moved from overseas locations are excluded from this table.\textsuperscript{xxi}

Because military spouses frequently hold occupations that have licensing requirements and because they move across state lines much more than the general population, complicated licensing processes are disproportionately burdensome for them. The next section will examine state licensing requirements for nurses as a case study of the difficulties that military spouses face when transferring their license across state lines.
Part 2: Nurse Licensing Case Study

Registered Nursing License Portability

Nursing is among the most popular professions for military spouses, and registered nurses must meet licensure requirements in each of the states where they practice. Even though the nursing profession has standardized several aspects of its licensing procedures, transferring a license when moving remains a complicated process because of variability in state licensing requirements. These problems are not unique to the nursing profession, and many licensed professionals face similar challenges when attempting to transfer their license across state lines.

To illustrate the administrative and financial burdens that licensed military spouses face when they move across state lines, this section examines a case study of nursing licensing requirements. This section documents the process for obtaining a new nursing license in any state, lists the standardized aspects of moving a nursing license to another state, and demonstrates the variability in licensure requirements across state lines.

Initial Licensing Hurdles

To obtain an initial license as a registered nurse (RN) in any state, applicants must satisfy a large set of requirements. According to the Bureau of Labor Statistics, a nursing student must complete either a bachelor’s degree, an associate’s degree, or receive a diploma from an approved nursing program. After completing a degree from an accredited program, an applicant for a registered nursing license must take the National Council Licensure Examination for Registered Nurses (NCLEX-RN). This nationally recognized test is administered by the National Council of State Boards of Nursing (NCSBN) and “measures the competencies needed to perform safely and effectively as a newly licensed, entry-level nurse.” Passing a background check is also a requirement for nursing licensure in all states.

Standardized Aspects of the Nursing “Licensure by Endorsement” Process

In general, a nurse changing his or her state of permanent residence must apply to the new state’s licensing board for “licensure by endorsement,” which is the process of transferring an existing nursing license to a new state. This process includes the application for and receipt of a temporary license while the application for a permanent license is processed. While a nurse waits for a temporary license, he or she may be unable to practice. The Nurse Licensure Compact (NLC) and the NURSYS online database help to address this inflexibility and facilitate the license transferring process by providing elements of standardization.

The NCSBN created the NLC in 1997. Twenty-four states are members of the NLC. If a nurse changes his or her permanent residence from one compact state to another, the compact allows the nurse to practice using the previous state’s license for up to 30 days. A change in residence requires that the nurse obtain a temporary or permanent license in the new state of residence in order to practice there for longer than 30 days. The NLC website states that nurses transferring their licenses when moving across state lines must “apply for licensure by endorsement, pay any applicable fees, and complete a declaration of primary state of residency in.
the new home state, whereby a new multistate license is issued and the former license is inactivated.\textsuperscript{xxvi} In other words, the 30-day privilege granted by this compact is separate from the temporary and permanent licenses granted through licensure by endorsement with the state nursing board. The compact agreement fills the gap between the time when the nurse moves and when a temporary license can be issued by the receiving state’s nursing board.

The “licensure by endorsement” process has many components. A major part of this process is the verification of licensure in the previous state of residence. To this end, the NCSBN created an online data clearinghouse called NURSYS. Forty-six state nursing boards participate in NURSYS for verification of previous RN licensure.\textsuperscript{xxvii} If a nurse needs license verification from a state that does not participate in NURSYS, he or she must contact the latter state’s nursing board for a state-specific verification. There is a $30 fee for the use of the NURSYS system.\textsuperscript{xxviii}

Although the NLC and NURSYS provide some standardization to the licensure by endorsement process, they do not ensure straightforward license portability for nurses moving across state lines and do not eliminate many of the non-uniform aspects of the application process, which are discussed below.

\textit{Variability Among States in the “Licensure by Endorsement” Process}

While states frequently employ “licensure by endorsement” in nursing licensure, many states have additional requirements. Some states require “current experience”; this requirement mandates that prospective state license holders hold a current license and have worked as a nurse for some period specified by the state licensure board. The “current license” requirement often presents a significant complication when the license holder moves back to the United States after living overseas, as many military spouses do.

To allow nurses to continue practicing while their application for permanent licensure by endorsement is being processed, many state nursing boards offer temporary licenses after a preliminary background and qualifications checks. A clean record is usually required for a temporary license to be issued.\textsuperscript{xxix}

Table 6 lists the 10 states with the largest active duty military populations and illustrates the variability in state nursing board requirements regarding license portability. For example, the wait time for a temporary license varies from as little as ten days in Virginia and Texas to up to six weeks in California. The time period for which a temporary license is valid also varies, from 30 days in Virginia to six months in California, Kentucky and North Carolina.\textsuperscript{xxx} The waiting time for a permanent license is often not published by the state nursing board, but in most states an application expires if not completed within one year of the start date. Application fees also vary: among the 10 states examined, the fee ranged from $43 in Colorado to $200 in Texas.\textsuperscript{xxxi}

\textit{Other Factors}

There are other factors that both facilitate and slow the licensure by endorsement process. Some states offer automated procedures for submission of fingerprints, transcripts and fees, but others do not.\textsuperscript{xxxi} Variability exists in the state board requirements for nursing licenses as well. Some
states automatically accept nursing degrees issued by a nationally approved program operated in another state, while others require that a nurse fulfill specific course requirements prior to licensure by endorsement. \textsuperscript{xxxiii} There is also variation in state licensure requirements on training about time-varying issues such as infection control, abuse, privacy, and medical records.\textsuperscript{xxxiv}

Although license portability for nurses is generally more straightforward than for other professions, nurses moving across state lines still have to go through a rigorous application process to practice nursing in another state. The variability of these processes and the associated need to continually relicense through examination poses difficulties for military spouses in licensed occupations. Other professions popular among military spouses, such as teaching, have even more complicated license portability requirements. One aspect of teacher licensing is discussed in Box 1, below.

### Box 1: Teacher Testing Requirements

License portability in teaching is very complicated. There are several tiers of licensing in teaching, and course requirements vary widely based on the state and the subject being taught. Even the relatively standardized portions of teaching license requirements, such as the required Praxis II subject tests, have very different state standards. The table below demonstrates how the Praxis II cutoff scores vary among states.\textsuperscript{xxxv}

<table>
<thead>
<tr>
<th>State</th>
<th>English Language, Literature, and Mathematics</th>
<th>Composition</th>
<th>Social Studies</th>
<th>Biology</th>
<th>Chemistry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado</td>
<td>156</td>
<td>162</td>
<td>150</td>
<td>.</td>
<td>.</td>
</tr>
<tr>
<td>Hawaii</td>
<td>136</td>
<td>164</td>
<td>154</td>
<td>151</td>
<td>154</td>
</tr>
<tr>
<td>Kentucky</td>
<td>125</td>
<td>160</td>
<td>151</td>
<td>146</td>
<td>147</td>
</tr>
<tr>
<td>Virginia</td>
<td>147</td>
<td>172</td>
<td>161</td>
<td>155</td>
<td>153</td>
</tr>
</tbody>
</table>

In addition to the variability in Praxis II cutoff scores, many states with large military populations have their own individual examinations. Re-taking exams due to inconsistent cutoff scores or additional state tests pose time-consuming and expensive barriers to license portability.
### Table 6: Requirements for Transferring Nursing Licenses to a New State

<table>
<thead>
<tr>
<th>State</th>
<th>Does the state participate in NLC and NURSYS?</th>
<th>Application fee?</th>
<th>NCLEX Standardized Test</th>
<th>Temporary license valid for:</th>
<th>Wait time for temporary license:</th>
<th>Degree from accredited nursing education program needed?</th>
<th>Need Current Experience for Endorsement?</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>No (accepts verification from NURSYS, but does not provide information through NURSYS)</td>
<td>$100 or $151, depending on which fingerprinting method chosen</td>
<td>Yes, or SBTPE</td>
<td>6 months</td>
<td>4-6 weeks</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Colorado</td>
<td>Yes</td>
<td>$43</td>
<td>Yes, or SBTPE</td>
<td>4 months</td>
<td>--</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Florida</td>
<td>NURSYS only</td>
<td>$223</td>
<td>Yes, or SBTPE</td>
<td>--</td>
<td>--</td>
<td>Yes</td>
<td>Requires that the applicant worked as a nurse for 2 of the past 3 years</td>
</tr>
<tr>
<td>Georgia</td>
<td>No (accepts verification from NURSYS, but does not provide information through NURSYS)</td>
<td>$60</td>
<td>Yes, or SBTPE</td>
<td>Does not typically provide temporary licenses</td>
<td>--</td>
<td>Yes</td>
<td>Requires that the applicant worked as a nurse for 3 months or 500 hours in the past 4 years</td>
</tr>
<tr>
<td>Hawaii</td>
<td>No (accepts verification from NURSYS, but does not provide information through NURSYS)</td>
<td>$135-$180</td>
<td>Yes (minimum score: 1600), or SBTPE (minimum score: 350)</td>
<td>3 months</td>
<td>--</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Yes</td>
<td>$163.25</td>
<td>Yes, or SBTPE</td>
<td>6 months</td>
<td>2 weeks</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Yes</td>
<td>$188</td>
<td>Yes (minimum score: 1600), or SBTPE (minimum score: 350)</td>
<td>6 months</td>
<td>2 weeks</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Texas</td>
<td>Yes</td>
<td>$200</td>
<td>Yes, or SBTPE (minimum score: 350)</td>
<td>120 days</td>
<td>10 days</td>
<td>Yes</td>
<td>Requires that the applicant worked as a nurse or passed the appropriate RN exam in the past 4 years</td>
</tr>
<tr>
<td>Virginia</td>
<td>Yes</td>
<td>$190</td>
<td>Yes, or SBTPE (minimum score: 350)</td>
<td>30 days (may be extended at discretion of the board)</td>
<td>10 days</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Washington</td>
<td>NURSYS only</td>
<td>$92</td>
<td>Yes, or SBTPE</td>
<td>--</td>
<td>--</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

Note: ‘--’ indicates unavailable information. Source: Web sites of the listed state’s Board of Nursing. Contact information for each State Board is posted on the web site of the National Council of State Boards of Nursing, under a link for Boards of Nursing. See [www.ncsbn.org](http://www.ncsbn.org).
Part 3: Best Practices and Department of Defense Initiatives

Best Practices to Facilitate Licensure Portability

DoD has identified best practices that states could adopt to facilitate license portability. Although DoD initially focused on promoting specific national compacts and national certifications for two career areas (teachers and nurses), the Department has recently shifted to initiatives easing the overall licensing process in a state to affect a broader population of licensed military spouses. The Nurse Licensure Compact, described earlier in this report, which gives nurses a more streamlined approach to transferring a current license to a member state, provided DoD the key concepts (temporary licenses and endorsements) to use with states for expediting licensure in other occupations, particularly if the state boards adopt methods that can expedite the application and approval process.

Licensure by Endorsement

DoD and independent studies have consistently found that “licensure by endorsement” significantly eases the process of transferring a license from one state to another. Standard “licensure through examination” requires the applicant to go through numerous state reviews in addition to passing national or state examinations and may include a supervised practicum or apprenticeship. Licensure by endorsement streamlines the application and state verification process for applicants with active out-of-state licenses, helping licensed military spouse professionals return to work more quickly. Obtaining a license by endorsement usually only requires that the license from the previous state is based on requirements similar to those in the receiving state, and without a disciplinary record. However, in some cases, applicants must also show they have recently worked in the occupation (such as two out of the past four years) as a way of demonstrating current experience or proficiency. This latter requirement can pose a problem for military spouses who have been unable to practice due to assignment overseas or in other locations. If a spouse does not meet these requirements, they will, at a minimum, have to undergo further scrutiny than the endorsement process generally requires, and in some cases, go through the full “licensure through examination” process.

In its efforts to promote a broad-based model for licensure by endorsement, DoD worked closely with the Colorado Department of Regulatory Agencies (DORA) and interested state legislators, who subsequently passed Colorado House Bill (HB) 1175 in 2010. The legislation requires the licensure through endorsement process be considered for all 77 occupations regulated by DORA and allows the Director of DORA, rather than the individual licensing boards, to determine what is required to demonstrate competency for endorsement. This eliminates delays in waiting for boards to convene. Moreover, the legislation allows for alternative demonstrations of current experience, where required, such as accepting continuing education as a substitute when there are gaps in employment. This last provision especially helps military spouses who have been at an overseas duty station for an extended period of time and unable to practice.

Two other states enacted legislation in 2011 facilitating licensure by endorsement, each with a somewhat different approach to accommodating the needs of military spouses:
• Arizona enacted Senate Bill (SB) 1458 in 2011, which allows a military spouse applicant to qualify for endorsement with one year of experience in most occupations. For those few that require more than one year, it allows the applicant to be licensed if supervised by a licensed professional.

• Texas SB 1733, enacted in 2011, is similar to Colorado HB 1175 in that it allows the board to establish alternatives to current experience for proof of occupational competency. The bill also allows military spouses who had been licensed in Texas to reinstate their license if it expired less than five years ago and they spent at least six months of that time out of the state.

Temporary or Provisional Licensing

Temporary or provisional licensure is another way to ease state-to-state transitions for military spouses. Typically, these licenses are valid for anywhere between 3 and 12 months. To apply, the applicant usually has to provide proof of a current license, obtain a background check, and submit an application and fee. These licenses allow applicants to be employed while they fulfill all of the requirements for a permanent license, including examinations or endorsement, applications, and additional fees. Typically, temporary or provisional licenses are managed separately by each occupational area within a state, as is true for the Nurse Licensure Compact, discussed earlier in this report.

Colorado also provided DoD’s first opportunity to gain support for temporary/provisional licensing for military spouses. In 2008, Colorado enacted HB 1162 which provides interim authorization to a military spouse with a current teaching license from another state to work within a school district for one year and allows the school district to provide an induction program which will help the military spouse obtain a professional educator license.

In 2010, DoD worked with state legislators in Florida to develop legislation supporting temporary licensure that encompasses multiple occupations. Florida HB 713 impacts commercial occupations, such as Veterinarians and Certified Public Accountants, providing the military spouse a six month temporary license as long as the spouse is married to an active member of the military assigned in Florida, has a current license, submits fingerprints for a background investigation, and pays a fee for the temporary license. Moreover, the bill allows military spouses to retain their Florida licenses if they move out of state for military reasons, and to practice without renewing the license upon return as part of a military move. Florida extended these provisions to healthcare occupations in 2011 with the enactment of HB 1319.

Four other states (Alaska, Kentucky, Missouri, and Tennessee) enacted legislation in 2011 to provide temporary/provisional licenses to military spouses, primarily using the Florida model. Notably, Kentucky HB 301 and Tennessee HB 968 provide licensure by endorsement if the spouse is qualified and temporary licensure if the spouse must fulfill additional state requirements to obtain a license (by endorsement or examination).
Expedited Application Processes

Approximately half of the states use a regulatory agency, such as the Department of Regulatory Agencies, while the others regulate through individual occupational boards and do not have an umbrella agency to expedite the application process. Different approaches were required to streamline the process in these states.

Through internal agreements with individual licensing boards, the Colorado Director of DORA has the authority to expedite the endorsement process by interceding to approve applications that fulfill the boards’ criteria. Two states which do not have structures analogous to that in Colorado found other ways to expedite the application process:

- Montana provided an innovative approach in HB 94 that allows boards to approve an application (for an endorsement or temporary license) based on an affidavit stating that the information provided is true and accurate and that the necessary documentation is forthcoming. Boards review the documentation upon receipt and can take disciplinary action if there are discrepancies.

- Utah HB 384 allows their occupational boards to approve the use of out-of-state licenses for “the spouse of an individual serving in the armed forces of the United States while the individual is stationed within this state, provided:
  (i) the spouse holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division; and
  (ii) the license is current and the spouse is in good standing in the state of licensure.”

While the Utah provision is the most inclusive and least intrusive for a military spouse, DoD will monitor its implementation to see if out-of-state licenses are accepted by employers as equal in quality to in-state licenses. In developing expedited approaches that save military spouses time and money, DoD does not want to make licensure easier for military spouses to achieve at the expense of degrading their perceived value in their profession.

The 2011 legislative activity is now the baseline for further developments in 2012. Legislators, regulators, and boards have been innovative and have shown an overall willingness to address the core concern that military spouses have only a short time in a location to establish their households, obtain new licenses, find employment within their professions, and progress in their skills and abilities. 2012 may provide additional innovation and opportunities to improve licensure portability for military spouses around the following integrated set of concepts:

- Facilitating endorsement of a current license from another jurisdiction as long as the requirements for licensure in that jurisdiction are substantially equivalent to those in the licensing state, and the applicant:
  o Has not committed any offenses that would be grounds for suspension or revocation of the license in the other jurisdiction, and is otherwise in good standing in that jurisdiction; and
Can demonstrate competency in the occupation through various methods as determined by the Board, such as having completed continuing education units, having had sufficient recent experience (in a full or part time, paid or volunteer position), or by working under supervision for a prescribed period.

- Providing a temporary or provisional license allowing the military spouse to practice while fulfilling requirements needed to qualify for endorsement in the licensing state, or awaiting verification of documentation supporting an endorsement. Temporary licenses should require minimum documentation, such as proof of holding a current license in good standing and marriage to an active duty Service member who is assigned to the state.

- Expediting application procedures so that:
  - The director overseeing licensing within the state has authority to approve license applications for the boards; and/or
  - The individual licensing boards have authority to approve a license based simply on an affidavit from the applicant that the information provided on the application is true and that verifying documentation has been requested.

Other Department of Defense Initiatives

DoD Military Spouse Discussion Board

Although these current licensure initiatives appear very promising, DoD is reaching out to military spouses for their input on how best to alleviate the hindrances created by licensure requirements. Spouses have been encouraged to share their stories and concerns about the licensure process and provide examples of real world solutions. DoD posted a discussion board on Facebook.com to facilitate the aggregation of these stories and issues.

DoD also recognizes that best practices developed thus far with states may not cover all occupations and all impediments. With the exception of legislation passed in Colorado in 2008 for teachers entering the state, DoD is not aware of changes improving licensure for military spouses in this particular profession. Similarly, the legislation recently passed has specifically excluded attorneys. DoD launched specific discussion board sessions to learn more about the processes for obtaining teaching or law licenses and the barriers faced in maintaining these licenses while moving with the military. To further this discussion, DoD has invited interested military spouses who are teachers and attorneys to join groups to continue this dialogue.

Spouses who are attorneys have responded through the Military Spouse JD Network (MSJDN), an organization established by military spouses to advocate for provisional bar membership, to educate the legal community about military spouses, and to build a network to support improved career opportunities. DoD is working with the JD Spouse Network to achieve accommodations for attorneys.
MyCareer Advancement Account (MyCAA) Program

DoD currently operates the MyCAA program, which provides flexible, self-managed education and training accounts that enable military spouses of junior service members to gain the skills needed to successfully enter, navigate, and advance in portable careers. The accounts offer up to $4,000 to eligible spouses for pursuit of an Associate’s degree, or license or credential leading to a portable career. Accounts are available to military spouses married to service members serving on active duty in the junior Enlisted, Warrant Officer and Officer grades. Funds may be used by eligible military spouses entering the workforce or transitioning between jobs and careers, and to incumbent workers in need of new skills to remain employed or move up the career ladder. Accounts must be used to pay for expenses directly related to the attainment of an Associate’s degree, license, or industry-recognized credential. The accounts have helped build the financial stability of military families. In FY11, approximately 38,000 spouses applied for and were provided MyCAA financial assistance.

Military Spouse Employment Partnership (MSEP)

The Military Spouse Employment Partnership (MSEP) is a targeted recruitment and employment partnership solution that connects corporate partners with military spouses who are seeking fulfilling portable careers. MSEP supports spouses of members on active duty, in the National Guard, and Reserves from all Services. MSEP partners offer flexible job opportunities that can withstand relocations, deployments, and other aspects of military life that have made career advancement so difficult for spouses in the past. MSEP now has almost 100 vetted “Fortune 500 Plus” employers participating, with over 150,000 jobs posted to its web portal (www.MSEPJobs.com) and 10,000 spouses who have been hired. As an MSEP Partner, a company agrees to:

- Identify and promote career opportunities for military spouses;
- Post job openings and a corporate human resources employment page on the MSEP Web portal;
- Offer transferable, portable career opportunities to relocating military spouse employees;
- Mentor incoming MSEP corporate partners;
- Participate in an annual MSEP meeting; and
- Document and provide employment data on military spouses hired.

MSEP’s goal is to level the playing field and help military spouses connect with companies that are searching for skilled employees. Moreover, the impact of MSEP goes beyond just reducing the unemployment rate for military spouses by connecting employers to a large and diverse body of exceptionally capable, dedicated, and motivated workers. MSEP provides meaningful career opportunities that are compatible with the spouse’s military service, which supports families remaining in the military.

Unemployment Compensation Eligibility

Military spouses face many challenges associated with frequent mobility, including the loss of income associated with the relocation process. In 2004, DoD began working with states to
enable military spouses who become unemployed because of their service member’s reassignment to be eligible for unemployment compensation. Prior to DoD’s involvement in this issue, most state statutes and policies viewed a spouse leaving a job due to a military move as a "voluntary" separation despite the fact that their departures are involuntary. Thirty-nine states now provide military spouses eligibility for unemployment compensation when they leave employment because of a military move, nearly triple the number of states in 2004. Eighty-five percent of military spouses live in these 39 states (plus the District of Columbia). The states granting unemployment compensation eligibility to working spouses in transition provide a much-needed financial bridge for military families during mandatory moves and allow licensed spouses the cushion to obtain new credentials and seek employment in their new state.
Part 4: Conclusion

Occupational licensing requirements place a significant and undue burden on military spouses, a population that makes great sacrifices for this country. Because many military spouses hold occupational licenses and often move across state lines, the patchwork set of variable and frequently time-consuming licensing requirements across states disproportionately affect these families.

A spouse’s employment plays a key role in the financial and personal well-being of military families, and their job satisfaction is an important component of the retention of service members. Without adequate support for military spouses and their career objectives, the military could have trouble retaining service members.

Although further research will be conducted to pinpoint the most effective ways to help licensed military spouses when they transition across state lines, DoD has already identified several best practices that states can implement to ease job transitions for this population. These best practices — licensure by endorsement, temporary licensing, and expedited application processes — come at little cost to states, but would make an enormous difference in the lives of licensed military spouses.

DoD, through the DoD-State Liaison Office (DSLO), has an ongoing program to address key issues with state policymakers. This program, USA4 Military Families, covers 10 key issues, which include occupational licensing and eligibility for unemployment compensation benefits. As of February 2012, thirteen states have introduced bills addressing the aforementioned best practices, and DSLO is working with these legislators. This is encouraging and shows that states are willing to consider this valuable change. The Administration encourages all states to examine these best practice initiatives and work with DoD on their implementation. DoD will track the enactment of legislation to measure the change in processes and continue to request feedback from military spouses to ensure these processes meet their needs.

For additional information on these initiatives or to contact the DSLO, please visit www.usa4militaryfamilies.org and click on the licensure issue. Although DoD continues to work on these issues on behalf of military spouses, more work remains to be done.
Appendix 1: Licensing and Certification

There are two major types of occupational skill verification: certification and licensing. Certification is less stringent than licensing, and is meant to ensure that practitioners meet a minimum standard of knowledge about their field. Professions as varied as car mechanics and travel agents are certified. Licensing gives the practitioner a “right to practice,” which differs from certification in that it is illegal to practice without a license.xxxvii Possessing a license indicates that the practitioner has satisfied government requirements by passing exams, completing education requirements, satisfying background checks, completing administrative paperwork, and paying fees.xxxviii A wide range of professions are licensed, including secondary school teachers, healthcare professionals (including nurses, doctors and medical technicians), lawyers, and social workers.

For most licensed professions, state boards administer the licensure process. Because of the variability in the licensing requirements from state to state, groups that are highly mobile and work largely in licensed fields frequently face administrative difficulties due to the lack of licensing portability.
### Appendix 2: Top 20 States With the Most Active Duty Military Spouses

<table>
<thead>
<tr>
<th>State</th>
<th>Number of Military Spouses (total)</th>
<th>Military Spouses per 1000 Civilian Spouses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hawaii</td>
<td>25,875</td>
<td>119.7</td>
</tr>
<tr>
<td>Alaska</td>
<td>12,025</td>
<td>103.4</td>
</tr>
<tr>
<td>Virginia</td>
<td>65,889</td>
<td>46.2</td>
</tr>
<tr>
<td>North Carolina</td>
<td>55,563</td>
<td>33.8</td>
</tr>
<tr>
<td>Kentucky</td>
<td>25,896</td>
<td>30.2</td>
</tr>
<tr>
<td>Washington</td>
<td>32,553</td>
<td>27.6</td>
</tr>
<tr>
<td>Colorado</td>
<td>23,292</td>
<td>27.1</td>
</tr>
<tr>
<td>Kansas</td>
<td>15,183</td>
<td>26.7</td>
</tr>
<tr>
<td>Georgia</td>
<td>38,563</td>
<td>24.9</td>
</tr>
<tr>
<td>North Dakota</td>
<td>3,030</td>
<td>22.1</td>
</tr>
<tr>
<td>New Mexico</td>
<td>6,309</td>
<td>18.5</td>
</tr>
<tr>
<td>South Carolina</td>
<td>13,730</td>
<td>17.5</td>
</tr>
<tr>
<td>Texas</td>
<td>66,936</td>
<td>16.8</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>11,301</td>
<td>15.7</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1,610</td>
<td>15.2</td>
</tr>
<tr>
<td>Nevada</td>
<td>5,387</td>
<td>14.4</td>
</tr>
<tr>
<td>Maryland</td>
<td>13,883</td>
<td>14.0</td>
</tr>
<tr>
<td>California</td>
<td>72,422</td>
<td>12.3</td>
</tr>
<tr>
<td>Delaware</td>
<td>1,819</td>
<td>11.9</td>
</tr>
<tr>
<td>Louisiana</td>
<td>9,423</td>
<td>11.6</td>
</tr>
</tbody>
</table>

**Note:** Location of spouses is based on the assignment of the service member. Service members stationed in the District of Columbia are omitted. Numbers are as of September 30, 2011.
References and Notes

In this report, “military spouses” refer to the civilian spouses of military personnel.


Where the civilian population is adjusted for the gender composition of the military spouse population


See Appendix 1 for the difference between ‘certification’ and ‘licensing.’


The CPS consists of a representative sample of about 60,000 households a month, and labor force questions are asked concerning all working-age adult members in the household. The ASEC CPS supplement includes detailed questions on the occupation of all working-age adults.

Department of Defense Personnel Files; this does not include spouses who are themselves a part of the military.


Excludes moves from overseas.

These data are from 2006-2010 because questions regarding mobility are asked of the previous year. These data were compiled using pooled data from 2007 to the 2011 ASEC CPS supplement.


Before 1982, this test was called the State Board Test Pool Examination (SBTPE), and results from this older version of the test are still accepted by state nursing boards.


National Council of State Boards of Nursing. "Nurse Licensure Compact: Fact Sheet for Licensees and Nursing Students." NCLA.


Prior convictions and disciplinary actions are often reviewed by state boards on a case-by-case basis, taking into account the severity of prior offenses and any remediary activities that may have been required. Telephone conversation with Danny Cope, California Department of Consumer Affairs Board of Registered Nursing call center operator, October 20, 2010.

Web sites of the listed state’s Board of Nursing. Contact information for each State Board is posted on the web site of the National Council of State Boards of Nursing, under a link for Boards of Nursing. See www.ncsbn.org.

Web sites of the listed state’s Board of Nursing. See www.ncsbn.org.

Telephone conversation with Danny Cope, California Department of Consumer Affairs Board of Registered Nursing call center operator, October 20, 2010.
Telephone conversation with Diane Tompkins, Assistant Director of Certifications, American Nurses’ Credentials Center, October 21, 2010.

Email correspondence with Anne Tumbarello, Director of the BSN Program at Mount St. Mary’s College in Los Angeles, California.


Eligible military spouses include those who are married to Service members on active duty and those who are married to members of the Guard and Reserve who are on Federal orders. The junior grades covered are Enlisted grades E1 – E5, Warrant Officer grades W1 and W2, and Officer grades O1 and O2.


CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 1932 VERSION: AMENDED APRIL 17, 2012

AUTHOR: GORELL SPONSOR: AUTHOR

RECOMMENDED POSITION: NONE

SUBJECT: UNITED STATES ARMED SERVICES: HEALING ARTS BOARDS

Existing Law:

1) Requires healing arts boards under the Department of Consumer Affairs (DCA) to provide methods of evaluating education, training, and experience obtained in military service if the training is applicable to the requirements of the profession. (Business and Professions Code (BPC) §710)

2) Defines an acceptable supervisor of a marriage and family therapist intern as someone who meets the following requirements (BPC §4980.03(g)):

   a. Has been licensed by a state regulatory agency for at least two years as a marriage and family therapist, licensed clinical social worker, licensed professional clinical counselor, licensed psychologist, or licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology;

   b. If a licensed professional clinical counselor, meets specified additional training and education requirements specified in law;

   c. Has not provided therapeutic services to the intern;

   d. Has a current valid license not under suspension or probation; and

   e. Complies with supervision requirements established by the Board of Behavioral Sciences (Board) in regulations.

3) States that for persons who apply for marriage and family therapist licensure or registration on or after January 1, 2014, the Board shall accept education and experience gained while residing outside of California for purposes of satisfying licensure or registration requirements if the education and experience is substantially equivalent to the Board’s requirements, and if holding a foreign degree, the applicant proves the education is substantially equivalent by providing the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service. (BPC §§4980.74, 4980.76)

4) Defines “substantially equivalent” LMFT and LPCC education and experience, as follows (BPC §§4980.78, 4999.62)

   a. A degree is obtained from a school accredited as defined in law, consists of at least 48 semester or 72 quarter units, and meets specified practicum and course content requirements;
b. The applicant completes any units and course content required under California law not already completed;

c. The applicant completes a course in California Law and Professional ethics covering specified topic areas.

5) Defines an approved supervisor of a professional clinical counselor intern as someone who meets the following requirements (BPC §4999.12(h):

a. Has two documented years of clinical experience as a licensed professional clinical counselor, licensed marriage and family therapist, licensed clinical psychologist, licensed clinical social worker, or licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.

b. Has received professional training in supervision;

c. Has not provided therapeutic services to the clinical counselor intern; and

d. Has a current valid license that is not under suspension or probation.

6) States that for persons who apply for professional clinical counselor licensure or registration on or after January 1, 2014, who do not already hold an out of state license, the Board shall accept education and experience gained outside of California to satisfy license or registration requirements if the education and experience is substantially equivalent to the Board’s requirements, and if holding a foreign degree, the applicant provides proof that the degree is equivalent to a degree from an accredited institution by providing the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service.  (BPC §4999.61)

7) Defines “accredited school of social work” as a school that is accredited by the Commission on Accreditation of the Council on Social Work Education.  (BPC §4991.2)

8) Requires an applicant for social work licensure or registration to have a master’s degree from an accredited school of social work.  (BPC §4996.2(b))

9) Defines an acceptable supervisor of an associate social worker (ASW) as a licensed mental health professional who, at the time of supervision, has possessed a valid license for at least two years as a psychologist, marriage and family therapist, licensed professional clinical counselor or physician certified in psychiatry by the American Board of Psychiatry and Neurology.  (California Code of Regulations (CCR) Title 16, §1874)

10) States that experience gained outside of California shall be accepted toward the licensing requirements for a clinical social worker if it is substantially equivalent to the requirements in the state of California.  (BPC §4996.17)

**This Bill:**

1) Beginning January 1, 2014, requires each healing arts board to annually issue a written report to the Department of Veterans Affairs and to the Legislature that details the board’s method of evaluating education, training, and experience obtained in military service. The report must also state whether the military education, training, and experience can be applied toward the board’s licensing requirements. (BPC § 710.2)
2) Requires the report submitted to the Department of Veterans Affairs and to the Legislature to include information about the number of military service members who have applied for and have used their military education, training and experience to fulfill the board’s licensing requirements. (BPC §710.2)

Comment:

1) **Author’s Intent.** The author’s office states that although the law currently requires all state boards that license health care workers to provide for methods of evaluating education, training, and experience obtained in military service, there is no clear, consistent answer being provided about what military training can be used to satisfy civilian licensing requirements. The author’s office would like to require state agencies to identify which requirements are satisfied by military training and what additional training is required. The goal is to reduce the amount of time and money wasted forcing veterans to repeat their medical training from scratch.

2) **Current Board Procedure.** The Board has very specific requirements for education and experience in its licensing laws. Currently, if an applicant for licensure or registration had military education and experience, the Board conducts a review to determine whether or not it was substantially equivalent to current licensing requirements. This would be done on a case by case basis, depending on the specific characteristics of the individual's education and experience.

The Board is not aware of specific circumstances in which an individual had military education or experience. This is not tracked by the Board and there is not a common provider of military education or experience that the Board sees cited on incoming applications. Occasionally, the Board sees supervised experience that was obtained out of the country. This experience may be accepted by the Board if the Board can determine that the supervision was substantially equivalent, and upon verification that the supervisor is an equivalently licensed acceptable professional who has been licensed at least two years in his or her current jurisdiction and is in good standing.

3) **Behavioral Health Professionals in the Military.** The U.S. Army Medical Service Corps lists two types of behavioral health job descriptions on its web site. These are included as Attachment A.

   a) **Social Workers:** According to the web site, “army social workers practice within a broad spectrum of practice areas and settings that include: medical inpatient and outpatient treatment, mental health, family advocacy, combat stress, substance abuse, program management and prevention and primary care. The Army Medical Service Corps offers you significant opportunities to expand into areas beyond your traditional clinical roles, including research, teaching, and administration.”

   Appointment as a social worker requires a master’s degree in social work with emphasis in clinical practice from a program accredited by the Council on Social Work Education. The social worker must also have a state license in social work that allows clinical independent practice.

   b) **Clinical Psychologist:** The web site states that “army clinical psychology officers provide a full range of psychological services to Soldiers, family members and military retirees. Assignment options include major medical centers, community hospitals and clinics.
Appointment as a clinical psychologist requires a doctorate in clinical or counseling psychology, a clinical psychology internship at an APA accredited program, and an unrestricted license to practice clinical or counseling psychology in the U.S.

Aside from utilizing social workers or clinical psychologists who are already state-licensed, it is unclear if the military offers any training programs to those seeking licensure as a psychotherapist. The Board has not been made aware of any such programs. If such a program were presented to the Board, it would need to be evaluated to see if the education and experience gained meet licensing requirements.

The military did recently enter into a partnership with Fayetteville State University to establish a master of social work program at Fort Sam Houston military installation in Texas. This program is designed to allow soldiers to earn a master’s degree in social work from an accredited university while in active duty military service, in an effort to increase the number of social workers in military service.

4) Reporting Requirements Unclear. Staff recommends an amendment to this bill which clarifies the Board’s reporting requirement to the Department of Veterans Affairs and the Legislature. Currently, the report is required to “clearly detail the methods of evaluating the education, training, and experience obtained in military service and whether that education, training, and experience is applicable to the board’s requirements for licensure.”

Military education and experience is evaluated by the Board on a case-by-case basis if a military applicant applies for licensure or registration. For example, if an active duty applicant with a master’s in social work from Fayetteville State University applied for licensure, the Board would evaluate the education and experience to see if the requirements are met. The case-by-case evaluation is needed in order to protect the public by ensuring qualified licensees. The Board would be able to provide the Department of Veterans Affairs and the Legislature with information about findings from past evaluations of military schools and military experience settings, and would also be able to provide information about Board licensing requirements. However, it is not possible for the Board to evaluate all possible scenarios of military education and experience if the Board is not aware of them.

5) Recommended Position. At its meeting on April 19, 2012, the Policy and Advocacy Committee did not recommend a position to the Board for this bill, but requested that the Board further discuss the policy implications of this legislation.

6) Support and Opposition.
   Support:
   • None on file.

   Opposition:
   • None on file.

7) History

2012
Apr. 25 From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 0.) (April 24). Re-referred to Com. on APPR.
Apr. 18 Re-referred to Com. on V.A.
Apr. 17 Read second time and amended.
Apr. 16 From committee: Do pass as amended and re-refer to Com. on V.A. (Ayes 9. Noes 0.) (April 10).
Mar. 8  Referred to Coms. on B., P. & C.P. and V.A.
Feb. 23  From printer. May be heard in committee March 24.
Feb. 22  Read first time. To print.

8) Attachments

- **Attachment A**: Army Medical Service Corps: Social Worker and Clinical Psychologist Job Descriptions

- **Attachment B**: United States Army Article: “Soldiers Can Earn Master’s Degree in Social Work,” April 21, 2008

- **Attachment C**: Fayetteville State University Web Page: FSU Social Work Department Receives Army Contract
Blank Page
An act to add Section 710.2 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL’S DIGEST

AB 1932, as amended, Cook Gorell. United States armed services: healing arts boards.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Existing law requires the rules and regulations of these healing arts boards to provide for methods of evaluating education, training, and experience obtained in military service if such training is applicable to the requirements of the particular profession or vocation regulated by the board. Under existing law, the Department of Veterans Affairs has specified powers and duties relating to various programs serving veterans.

This bill would require, by January 1, 2014, and annually thereafter, every healing arts board to issue a specified written report to the Department of Veterans Affairs and the Legislature, as specified, that clearly details the methods of evaluating the education, training, and experience obtained in military service and whether that education, training, and experience is applicable to the board’s requirements for licensure. The bill would declare the intent of the Legislature in this regard.
The people of the State of California do enact as follows:

SECTION 1. Section 710 of the Business and Professions Code was enacted in 1969 and because healing arts boards have not demonstrated significant compliance with that section, it is the intent of the Legislature to establish an annual reporting requirement to compel these boards to provide information about the methods of evaluating education, training, and experience obtained in military service in order to meet the needs of the upcoming wave of armed service members returning to civilian life.

SEC. 2. Section 710.2 is added to the Business and Professions Code, to read:

710.2. (a) By January 1, 2014, and annually thereafter, every healing arts board described in this division shall issue a written report to the Department of Veterans Affairs and to the Legislature that clearly details the methods of evaluating the education, training, and experience obtained in military service and whether that education, training, and experience is applicable to the board’s requirements for licensure. This written report shall include, but not be limited to, quantitative information about the number of service members who have applied for and have used their military education, training, and experience to fulfill the board’s requirements for licensure.

(b) (1) The requirement to submit a report to the Legislature under subdivision (a) shall be inoperative on January 1, 2018, pursuant to Section 10231.5 of the Government Code.

(2) A report to the Legislature shall be submitted in compliance with Section 9795 of the Government Code.
Health Professions Loan Repayment Program: Provides up to $120,000 for repayment of educational loans for qualified pharmacists. Payment is paid in annual increments of $40,000 for each year of active duty service, up to the total amount.

**BEHAVIORAL SCIENTISTS MAKE IMPORTANT CONTRIBUTIONS TO THE WELL-BEING OF OUR SOLDIERS**

**SOCIAL WORKER**

The primary mission of an Army social worker is to provide professional and comprehensive services through a broad range of individual, family, command and community interventions, programs and services. Their goal is to sustain, restore or enhance the social well-being and functioning of individuals, families, units and the Army community.

Army social workers practice within a broad spectrum of practice areas and settings that include: medical inpatient and outpatient treatment, mental health, family advocacy, combat stress, substance abuse, program management and prevention and primary care. The Army Medical Service Corps offers you significant opportunities to expand into areas beyond your traditional clinical roles, including research, teaching and administration.

**ELIGIBILITY**

Appointment as a social worker in the Army Medical Service Corps requires that you:

- Have a minimum of a master's degree in social work, with emphasis in clinical practice from a program accredited by the Council on Social Work Education.
- Have completed a two-year surgical podiatric residency before direct accession or be accepted for one of our podiatric surgical residency programs.

**INCENTIVE PROGRAMS**

- **Podiatric Surgical Residency Program:** a 36-month training program for qualifying podiatrists.
  - Complete core clinical competencies at Eisenhower Army Medical Center (12 months)
  - Complete surgery-focused residency at Womack Army Medical Center (24 months)
  - The active duty service obligation is 84 months including time spent in the residency program.
- **Non-Physician Health Care Provider Board Certification Pay:** is available to podiatrists having current board certification in podiatry. The amount of the pay is based on years of creditable service.
- **Entertainment, Travel, Relocation:**
  - Pay is available to social workers having a post baccalaureate degree and current board certification in social work. The amount of the pay is based on years of creditable service.

**ELIGIBILITY**

Appointment as a podiatrist in the Army Medical Service Corps requires that you:

- Have a Doctorate of Podiatric Medicine degree from an accredited program acceptable to the surgeon general.
- Have an active license to practice podiatry in the United States.
- Have completed a two-year surgical podiatric residency before direct accession or be accepted for one of our podiatric surgical residency programs.

**INCENTIVE PROGRAMS**

- **Podiatric Surgical Residency Program:** a 36-month training program for qualifying podiatrists.
  - Complete core clinical competencies at Eisenhower Army Medical Center (12 months)
  - Complete surgery-focused residency at Womack Army Medical Center (24 months)
  - The active duty service obligation is 84 months including time spent in the residency program.
- **Non-Physician Health Care Provider Board Certification Pay:** is available to podiatrists having current board certification in podiatry. The amount of the pay is based on years of creditable service.

ELIGIBILITY

Appointment as a social worker in the Army Medical Service Corps requires that you:

- Have a minimum of a master's degree in social work, with emphasis in clinical practice from a program accredited by the Council on Social Work Education.
- Possess a state license in social work.
- Have a Doctorate of Podiatric Medicine degree from an accredited program acceptable to the surgeon general.
- Have completed a two-year surgical podiatric residency before direct accession or be accepted for one of our podiatric surgical residency programs.

**INCENTIVE PROGRAMS**

- **Entertainment, Travel, Relocation:**
  - Pay is available to social workers having a post baccalaureate degree and current board certification in social work. The amount of the pay is based on years of creditable service.
CLINICAL PSYCHOLOGIST

The Army offers many exciting opportunities to practice clinical psychology in a variety of settings in the United States, Europe and other overseas locations. Army clinical psychology officers provide a full range of psychological services to Soldiers, family members and military retirees. Assignment options include major medical centers, community hospitals and clinics.

Army clinical psychologists are afforded the opportunity to be involved with a wide range of professional challenges, including teaching, research and administration.

ELIGIBILITY

Appointment as a clinical psychologist in the Army Medical Service Corps requires that:

- You have completed a doctorate in clinical or counseling psychology and a clinical psychology internship program from an APA accredited program.
- You have an unrestricted license to practice clinical or counseling psychology in the United States.

INCENTIVE PROGRAMS

- Health Professions Scholarship Program (HPSP): provides one- and two-year scholarships in accredited clinical psychology doctoral programs. It includes full tuition, a monthly stipend of more than $2,000 and payment of required fees.
- Clinical Psychology Internship Program (CPIP): a 12-month training program at Walter Reed Army Medical Center in Washington, D.C.; Tripler Army Medical Center in Honolulu, Hawaii; Eisenhower Army Medical Center in Augusta, Georgia; Madigan Army Medical Center, Tacoma, Wash.; or San Antonio Military Medical Center, San Antonio, Texas. It is available to graduate students in psychology.
- Psychology Diplomate Pay is available to psychologists who have been awarded the diplomate in psychology by the American Board of Professional Psychology.

IN PREVENTIVE MEDICINE SCIENCES, YOUR SKILLS CAN HAVE A REAL IMPACT ON FORCE MEDICAL PROTECTION

NUCLEAR MEDICAL SCIENCE OFFICER

Army nuclear medical science officers provide operational and consultative health physics support to occupational, environmental and public health entities in the areas of ionizing and non ionizing radiation protection, research, teaching and medical aspects of nuclear weapons effects.

ELIGIBILITY

Appointment as a nuclear medical science officer in the Army Medical Service Corps requires that you:

- Have a master's degree or doctorate in health physics, radiobiology, radiochemistry, nuclear physics, radiological physics, applied atomic physics, nuclear engineering, laser or microwave physics.
FORT SAM HOUSTON, Texas -- A new graduate program at the Army Medical Department Center and School is opening doors for aspiring social workers.

Starting in June, Soldiers will have the opportunity to earn their master's degree in social work from an accredited university while still carrying out their active-duty military commitment.

"My heart is still pounding," said Col. Yvonne Tucker-Harris, social work consultant to the Army surgeon general, of the program coming to fruition. "This is such a great investment for the Army." 

The program was made possible through an Army partnership with Fayetteville State University in North Carolina. As Soldiers complete the graduate course at the AMEDDC&S, they will be awarded a master's degree from FSU. While several universities sent in proposals in response to the Army's solicitation, FSU was selected as the partnering university because it represented the best fit for both the Army and the university.

"I see this as a win-win situation," said Terri Moore Brown, FSU's Social Work Department chair, in town to tour the AMEDDC&S facilities. "Our students will benefit from symposiums and workshops given by the faculty at Fort Sam Houston. We'll be able to expose our students to the wonderful resources here."

The partnership with FSU also opens the door to research collaborations, which can lead to better social work programs throughout the world, said Col. Joseph Pecko, director, Army-Fayetteville State MSW Program and Soldier and Family Support Branch.

"We're looking forward to joint efforts between the students and faculty here and at Fayetteville," Pecko said.

By starting an MSW program, Army leaders hope to boost the number of social workers, which has been depleted in the wake of the Global War on Terrorism.

Up until now, the Army relied on availability of MSW graduates from civilian universities who had gone on to acquire an independent practice license from their state of choice.

"The depletion of social workers has occurred due to the lack of available qualified, competent and committed social workers who have an understanding and desire to serve on active duty," said Dr. Dexter Freeman, assistant director, Army-Fayetteville State MSW Program. "Army social workers must ... be able to accept that their lives will involve multiple deployments in addition to helping Soldiers and Families cope with the stress of war."

The program is considered a force multiplier, Freeman said. "We're trying to increase our number of social workers," he said, adding that the social work force is undermanned by about 26 percent. "The best way to fix the problem is with our own master's of social work program that targets Soldiers who are in the force and qualified to enter the program."

The benefits clearly outweigh the cost, said Pecko. "Not only does the program take care of retention, but by recruiting and creating Army social workers, they'll know exactly what they're getting into and be more likely to stay in for a full career."

The first class of 19 Soldiers will begin in June with a faculty comprising three active-duty and four civil-service instructors, all with their doctorate in social work. The course will include two tracks: a 13-month track for Soldiers with a non-social work bachelor's degree, and an eight-month advanced standing track for students with a degree in social work from an accredited program. Students graduate with an MSW and will take their initial license before they leave Fort Sam Houston.

During the class, students will learn to understand the dynamics of human behavior in the context of their social environment, particularly in relation to the military experience. After graduation, students will be assigned to behavioral health departments throughout the world where they will conduct assessments and provide interventions to individuals and groups under the supervision of a licensed clinical social worker.
As social workers in the Army, graduates will provide individual counseling for Soldiers and their families, whether it's concerning substance abuse, physical or emotional abuse, or just help with daily challenges. In two years, they will have the opportunity to test for their independent practitioner license to become a LCSW.

"Through curriculum development we can give students military-unique training and set them up for success in the military," said Pecko, whose branch develops the post traumatic stress disorder training for the Army. "We will incorporate lessons from Operations Iraqi and Enduring Freedom into the program curriculum, as well as our experiences with combat-related emotional issues, such as PTSD."

Tucker-Harris said the investment in the Army's own will pay dividends in the future.

"It took a lot to get to this point, but we've had amazing support from Army leadership and we're looking forward to great success."
FSU Social Work Department Receives Army Contract

The Department of Social Work received a U.S. Army four-year contract for the Master of Social Work Program (MSW) at Fayetteville State University (FSU) to establish an off-campus MSW Program at the Fort Sam Houston military installation, which is located in Texas. Several major universities submitted proposals in response to the Army solicitation; however, FSU was selected as the partnering university. Dr. Brown is the Social Work Department Chair at FSU. The off-campus FSU MSW Program site is housed in the Army Medical Department Center and School (AMEDD C&S). This contract is the result of the Army Surgeon General’s, LTC Eric Schoomaker, request to establish a MSW Program that is accredited by the Council on Social Work Education (CSWE). The MSW Program at FSU has been accredited by CSWE since 2006. Opening the doors for FSU to establish an off-campus MSW Program site at Fort Sam Houston demonstrates how much the U.S. Army values the social work profession and that it views its relationship with FSU as an investment for the Army.

This is the first time the U. S. Army has partnered with a university within the University of North Carolina (UNC) system, and with a historically black college and university (HBCU) to establish an academic program at AMEDD C&S. In addition, the off-campus FSU MSW Program is the first social work academic degree program that is strictly for Army service members that is offered on a military installation.

On June 23, 2008, history was made when eighteen Army officers were inaugurated into the Fayetteville State University MSW Program during a ceremony at the Wood Auditorium, which is located in the U.S. Army Medical Command Building at Fort Sam Houston.

This award stems from the recognition that there is a dearth of social work officers in the current active duty Army inventory. The off-campus FSU MSW Program was developed as a result of the expressed desires of the U.S. Army to house an accredited MSW program that would increase the number of uniformed social work officers. The number of social workers in the Army has significantly decreased as a result of the recurring deployments related to the War on Terror. As the War on Terror continues, the immediate need for social work officers has become more pronounced. Active duty Army social workers are needed to effectively respond to the wounds of war that are inflicted on soldiers and their families. The U.S. Army's recognition of soldiers and military dependents' needs and the roles social workers can play in addressing some of those needs are notable.

Fayetteville State University currently has articulation agreements with Fort Bragg and Seymour Johnson Air Force Base to allow undergraduate and graduate students to pursue degrees. Because of the close proximity of FSU to Fort Bragg and Seymour Johnson Air Force Base, much of the military culture is embedded in Fayetteville State University. We understand deployments, military family advocacy programs, and different issues. i.e. separation, post-traumatic stress disorders, battle mind, etc. that troops and their families; As a result, one of the major objectives of the MSW Program is to integrate throughout the social work curriculum the culture and core values of soldiers and military families. These characteristics distinguish us from other MSW Programs in the country and will serve as an asset to the U.S. Army. Active duty Army soldiers, who are interested...
in the off-campus FSU MSW Program, must meet the admission requirements of Fayetteville State University and Army Long-term Health Education and Training.

For more information, please contact Dr. Dexter Freeman, Assistant Director, Army Medical Department Center & School, Fort Sam Houston, Texas at 210-221-6815 or email:

dfreema3@uncfsu.edu or Dr. Terri Moore Brown, Social Work Department Chair, at 910-672-1210/1853 or tmbrown@uncfsu.edu.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 2570   VERSION: INTRODUCED FEBRUARY 24, 2012

AUTHOR: HILL   SPONSOR: AUTHOR

RECOMMENDED POSITION: SUPPORT

SUBJECT: LICENSEES: SETTLEMENT AGREEMENTS

Existing Law:

1. Subjects an attorney to suspension, disbarment, or other disciplinary action for seeking the following in a settlement agreement (Business and Professions Code (BPC) §6090.5):
   a. A provision requiring that professional misconduct not be reported to the disciplinary agency;
   b. A provision requiring a plaintiff to withdraw a disciplinary complaint or refuse to cooperate with an investigation or prosecution being conducted by a disciplinary agency; and
   c. A provision requiring that a record of civil action for professional misconduct must be sealed from review by a disciplinary agency.

2. Requires that protection of the public is the highest priority for the Board when exercising its licensing, regulatory, and disciplinary functions. Public protection shall be paramount when inconsistent with other interests. (BPC §4990.16)

This Bill:

1. Prohibits a licensee regulated by the Department of Consumer Affairs (DCA) from including or allowing inclusion of the following provisions in a settlement agreement of a civil dispute (BPC §143.5(a)):
   a. A provision prohibiting the other party in the dispute from contacting, filing a complaint with, or cooperating with DCA or a board, bureau or program; and
   b. A provision that requires the other party in the dispute to withdraw a complaint from DCA or a board, bureau or program.

2. States that a licensee who includes or permits inclusion of such a provision is subject to disciplinary action by the board, bureau or program. (BPC §143.5(a))

3. States that a board, bureau or program under DCA that takes disciplinary action against a licensee based on a complaint that has also been the subject of a civil action that was settled for monetary damages may not require the disciplined licensee to pay any additional sums of money to the plaintiff. (BPC §146.5(b))
Comments:

1) Intent. The intent of this bill is to close a loophole in current law that allows a licensee or registrant regulated by DCA to prohibit a consumer that settles a civil suit with that licensee or registrant from filing a complaint or cooperating in an investigation with the licensee or registrant's regulatory board.

Previous supporters of similar bills have argued that the increasing use of these “regulatory gag clauses” are problematic because they are often used to intimidate victims into refusing to cooperate with investigations. This may prevent a regulatory board from taking disciplinary action against a negligent licensee or registrant. These licensees or registrants may continue to practice and harm the public because the Board is not aware of a civil dispute settlement.

One example cited in an analysis of similar past legislation is a case in which a doctor required a gag clause in 25 patients’ cases, prohibiting them from complaining to or cooperating with any investigation by the Medical Board of California.

2) Existing Law for Attorneys. This bill is modeled after a similar provision in the Business and Professions Code which prohibits attorneys from including in a settlement agreement any provisions requiring that misconduct not be reported to a disciplinary agency or any provisions requiring withdrawal of a complaint or refusing to cooperate with a disciplinary agency's investigation.

3) Previous Legislation and Board Position. AB 320 (Correa, 2004) and AB 446 (Negrete McLeod, 2005) were both very similar to this bill and would also have prohibited regulatory gag clauses. The Board took a position of “support” on AB 446. Both bills were vetoed by Governor Schwarzenegger. The Governor provided the following veto message for AB 446:

I am returning Assembly Bill 446 without my signature.

I vetoed a similar bill last year because of the negative effect it would have had on the California economy. This bill further erodes the ability to do business in California by creating more uncertainty regarding litigation by prohibiting any licensee or professional overseen by the Department of Consumer Affairs from including in a civil settlement agreement a provision that prohibits the other party from contacting or filing a complaint with the regulatory agency. When parties who are in dispute agree to settle, there should be some assurances that the dispute has been resolved in a satisfactory and final manner for both parties.

Supporters of this prior legislation have argued that the clause in the bill prohibiting a board from ordering additional monetary damages when it takes disciplinary action against a licensee for a complaint that has also been the subject of a civil action settled for monetary damages addresses the Governor’s stated concerns about subjecting a plaintiff to multiple disciplinary actions, or a “double jeopardy.” Supporters also argued that the concept of such “double jeopardy” is only applicable to criminal cases, not civil cases, and that while the purpose of the civil disciplinary system is to compensate defendants for injuries caused, the administrative disciplinary system serves an entirely different purpose, which is to protect consumers from future harm by incompetent or dishonest professionals.
SB 1111 (Negrete McLeod, 2010) and SB 544 (Price, 2011) were both part of an effort by DCA to provide healing arts boards with additional regulatory tools and with additional authority for investigating and prosecuting violations of the law. Both bills contained a provision similar to the one in this bill. The Board did not take a position on SB 1111, and took a “support if amended” position on SB 544. The amendments requested by the Board in order to achieve a “support” position were unrelated to the proposed settlement agreement provisions. SB 1111 and SB 544 both died in the Senate Business, Professions, and Economic Development Committee.

4) **Current Regulations.** On March 16, 2012, the Board filed a notice with the Office of Administrative Law to proceed with a regulation package. One of the provisions of this regulation package proposes amending Board regulations to include a provision that would make it unprofessional conduct for a Board licensee to include, or permit inclusion, of a provision in a civil settlement agreement that prohibits another party from contacting, cooperating, or filing a complaint with the Board, or a provision that requires another party to withdraw or attempt to withdraw a complaint that has been filed with the Board.

The public hearing for this proposal was held on May 1, 2012.

5) **Recommended Position.** At its meeting on April 19, 2012, the Policy and Advocacy Committee recommended that the Board take a support position on this bill.

6) **Support and Opposition.**

**Support:**
- Center for Public Interest Law

**Oppose:**
- California Chamber of Commerce
- Civil Justice Association of California
- American Council of Engineering Companies, California
- California Board of Accountancy

7) **History**

2012

Apr. 25 From committee: Do pass and re-refer to Com. on APPR. (Ayes 6. Noes 3.) (April 24). Re-referred to Com. on APPR.
Apr. 17 In committee: Set, first hearing. Hearing canceled at the request of author.
Mar. 19 Referred to Com. on B., P. & C.P.
Feb. 27 Read first time.
Feb. 26 From printer. May be heard in committee March 27.
Feb. 24 Introduced. To print.
An act to add Section 143.5 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL’S DIGEST

AB 2570, as introduced, Hill. Licensees: settlement agreements.
Existing law provides that it is a cause for suspension, disbarment, or other discipline for an attorney to agree or seek agreement that the professional misconduct or the terms of a settlement of a claim for professional misconduct are not to be reported to the disciplinary agency, or to agree or seek agreement that the plaintiff shall withdraw a disciplinary complaint or not cooperate with an investigation or prosecution conducted by the disciplinary agency.
This bill would prohibit a licensee who is regulated by the Department of Consumer Affairs or various boards, bureaus, or programs, or an entity or person acting as an authorized agent of a licensee, from including or permitting to be included a provision in an agreement to settle a civil dispute that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program, or that requires the other party to withdraw a complaint from the department, board, bureau, or program. A licensee in violation of these provisions would be subject to disciplinary action by the board, bureau, or program. The bill would also prohibit a board, bureau, or program from requiring its licensees in a disciplinary action that is based on a complaint or report that has been settled in a civil
The people of the State of California do enact as follows:

SECTION 1. Section 143.5 is added to the Business and Professions Code, to read:

143.5. (a) No licensee who is regulated by a board, bureau, or program within the Department of Consumer Affairs, nor an entity or person acting as an authorized agent of a licensee, shall include or permit to be included a provision in an agreement to settle a civil dispute, whether the agreement is made before or after the commencement of a civil action, that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program or that requires the other party to withdraw a complaint from the department, board, bureau, or program. A provision of that nature is void as against public policy, and any licensee who includes or permits to be included a provision of that nature in a settlement agreement is subject to disciplinary action by the board, bureau, or program.

(b) Any board, bureau, or program within the Department of Consumer Affairs that takes disciplinary action against a licensee or licensees based on a complaint or report that has also been the subject of a civil action and that has been settled for monetary damages providing for full and final satisfaction of the parties may not require its licensee or licensees to pay any additional sums to the benefit of any plaintiff in the civil action.

(c) As used in this section, “board” shall have the same meaning as defined in Section 22, and “licensee” means a person who has been granted a license, as that term is defined in Section 23.7.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 1134 VERSION: AMENDED MARCH 28, 2012

AUTHOR: YEE SPONSOR: CALIFORNIA ASSOCIATION OF MARRIAGE AND FAMILY THERAPISTS (CAMFT)

RECOMMENDED POSITION: NONE

SUBJECT: PERSONS OF UNSOUND MIND: PSYCHOTHERAPIST DUTY TO PROTECT

Existing Law:

1) Requires a therapist who determines, according to professional standards that a patient presents a serious danger of violence to another, to use reasonable care to protect the intended victim(s) against such danger. This includes warning the intended victim(s), the police, or taking whatever other steps are reasonably necessary under the circumstances. (Tarasoff, supra, 17 Cal.3d)

2) Allows no monetary liability or cause of action to arise against a psychotherapist who fails to warn of and protect from a patient’s threatened violent behavior, or who fails to predict and warn of and protect from a patient’s violent behavior, except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims. (Civil Code (CC) §43.92(a))

3) States that there can be no monetary liability or cause of action against a psychotherapist who discharges his or her duty to warn and protect by making reasonable efforts to communicate the threat to the victim(s) and to a law enforcement agency. (CC §43.92(b))

4) Defines "confidential communication between patient and psychotherapist" as: (Evidence Code (EC) §1012)
   - Information obtained from examining a patient;
   - Information transmitted between a patient and psychotherapist in confidence and to no one else except those who are present to further the interest of the patient, or those to whom disclosure is reasonable necessary for the accomplishment of the purpose for which the psychotherapist is consulted.

5) Requires a mental health professional to breach confidentiality when the professional has reasonable cause to believe that the patient is dangerous to his or her self or the person or property of another. (EC §1024)

6) Requires a therapist to warn a potential victim(s) if information communicated to the therapist leads the therapist to believe that the patient poses a serious risk of grave bodily injury to another. (Ewing v. Goldstein (2004), Cal.App.4th)

7) Defines a communication from a family member to the patient’s therapist, made for the purpose of advancing a patient’s therapy, as a "patient communication." (Ewing v. Goldstein (2004), Cal.App.4th)
8) Outlines instructions to a jury to determine if there is a cause of action for professional negligence against a psychotherapist for failure to protect a victim from a patient’s act of violence. (Judicial Council of California Civil Jury Instructions, Section 503A, “Psychotherapist’s Duty to Protect Intended Victim from Patient’s Threat”)

This Bill:

1) This bill would remove a psychotherapist’s (including LMFTs, LCSWs, and LPCCs) duty to warn and provide that there can be no monetary liability or cause of action against a psychotherapist unless the psychotherapist fails to discharge his or her duty to protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency. (Civil Code (CC) §43.92)

Comment:

1) **Author’s Intent.** This bill renames the duty of a psychotherapist, defined in Section 43.92 of the Civil Code, from “duty to warn and protect” to “duty to protect.” If this change is made, it will make the law consistent with changes made in 2007 to the Judicial Council of California Civil Jury Instructions, Section 503A, which renamed the therapist’s duty a “duty to protect” and eliminated the reference of “duty to warn.”

   According to the author’s office, this clarification is intended to make the law as clear as possible about the duty of a psychotherapist with respect to Civil Code Section 43.92. They state that currently, if a therapist makes a serious threat of physical violence against a reasonably identifiable victim, the therapist will have immunity from liability if he or she makes reasonable efforts to communicate the threat to the victim and to a law enforcement agency. This provides a “safe harbor” for therapists who do both of these things, but does not require them to. However, if they do not, then they will be held liable if it is proven that they did not take reasonable efforts to protect the victim.

   In order to address concerns that the law creates confusion about whether or not a warning to the potential victim is required, this bill proposes to rename the referenced duty from “duty to warn and protect” to “duty to protect.”

2) **Removal of the Duty to Warn.** The author’s office argues that the term “duty to warn” is no longer necessary, because steps needed for a therapist to avoid liability are spelled out in CC Section 43.92(b). Additionally, they note that the term “duty to warn” may cause confusion and danger, as warning victims “may precipitate preemptive violence rather than preventing it.” (Thomas Gutheil, M.D.)

3) **Previous Legislation.** AB 733 (Chapter 136, Statutes of 2005), clarified that the actions specified in CC 43.92(b) are required to be taken in order to obtain immunity from liability. However, the actions do not need to be taken in every case. This change in law was made in order to correct the prior California Civil Jury Instructions, which implied that if the actions taken in (b) were not taken, the psychotherapist would always be liable.

4) **Suggested Amendment.** In a recent analysis, the Senate Judiciary Committee consultant recommended the following amendment to ensure the renaming of the duty from “duty to warn and protect” to “duty to protect” is not interpreted by the courts to be a substantive change in law:

   “(c) It is the intent of the Legislature that this Act only change the name of the duty referenced in Section 43.92 of the Civil Code from a duty to warn and protect to a
duty to protect. Nothing in this act shall be construed to be a substantive change to Section 43.92 of Civil Code, nor shall any duty of a psychotherapist be modified as a result of changing the wording in that Section.

(d) It is the intent of the Legislature that a court interpret Section 43.92 of the Civil Code, as amended by this Act, in a manner consistent with the interpretation of Section 43.92 of the Civil Code as that Section read prior to January 1, 2013.”

5) **Recommended Position:** At its meeting on April 19, 2012, the Policy and Advocacy Committee decided not to take a position on this bill, but instead wait for further clarification.

6) **Support and Opposition.**

   **Support:**
   - California Psychological Association
   - California Psychiatric Association

   **Opposition:**
   - None on file.

7) **History**

   **2012**
   
   Apr. 20  Set for hearing May 1.
   Mar. 28  From committee with author's amendments. Read second time and amended. Re-referred to Com. on JUD.
   Mar. 1  Referred to Com. on JUD.
   Feb. 22  From printer. May be acted upon on or after March 23.
   Feb. 21  Introduced. Read first time. To Com. on RLS. for assignment. To print.

8) **Attachments**

   - (Judicial Council of California Civil Jury Instructions, Section 503A, "Psychotherapist’s Duty to Protect Intended Victim from Patient’s Threat")
An act to amend Section 43.92 of the Civil Code, relating to liability.

LEGISLATIVE COUNSEL’S DIGEST

SB 1134, as amended, Yee. Persons of unsound mind: psychotherapist duty to protect.

Existing law provides that no monetary liability and no cause of action arises against a psychotherapist, as defined, for failing to warn and protect from a patient’s threatened violent behavior except if the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims. Existing law also specifies that no monetary liability and no cause of action shall arise against a psychotherapist who, under those circumstances, discharges his or her duty to warn and protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.

This bill would revise these provisions by removing any duty to warn and by providing that no monetary liability and no cause of action will arise against a psychotherapist for failing to protect from a patient’s threatened violent behavior, except if the patient has communicated to the therapist a serious threat of physical violence against a reasonably identifiable victim or victims. In those circumstances, this bill would provide that there will be no monetary liability and no cause of action against the psychotherapist if the psychotherapist discharges his or her duty to protect by making reasonable efforts to communicate the threat to the intended victim or victims and to a law enforcement agency.
The people of the State of California do enact as follows:

SECTION 1. Section 43.92 of the Civil Code is amended to read:

43.92. (a) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is a psychotherapist as defined in Section 1010 of the Evidence Code in failing to protect from a patient’s threatened violent behavior or failing to predict and protect from a patient’s violent behavior except—where if the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.

(b) There shall be no monetary liability on the part of, and no cause of action shall arise against, a psychotherapist who, where the patient has communicated a serious threat of violence as specified in subdivision (a), under the limited circumstances specified in subdivision (a), discharges his or her duty to protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.
[Name of plaintiff] claims that [name of defendant]'s failure to protect [name of plaintiff/decedent] was a substantial factor in causing [injury to [name of plaintiff]/the death of [name of decedent]]. To establish this claim, [name of plaintiff] must prove all of the following:

1. That [name of defendant] was a psychotherapist;
2. That [name of patient] was [name of defendant]'s patient;
3. That [name of patient] communicated to [name of defendant] a serious threat of physical violence;
4. That [name of plaintiff/decedent] was a reasonably identifiable victim of [name of patient]'s threat;
5. That [name of patient] [injured [name of plaintiff]/killed [name of decedent]];
6. That [name of defendant] failed to make reasonable efforts to protect [name of plaintiff/decedent]; and
7. That [name of defendant]'s failure was a substantial factor in causing [[name of plaintiff]'s injury/the death of [name of decedent]].

Derived from former CACI No. 503 April 2007

Directions for Use

Read this instruction for a Tarasoff cause of action for professional negligence against a psychotherapist for failure to protect a victim from a patient’s act of violence after the patient made a threat to the therapist against the victim. (See Tarasoff v. Regents of Univ. of Cal. (1976) 17 Cal.3d 425 [131 Cal.Rptr. 14, 551 P.2d 334].) The liability imposed by Tarasoff is modified by the provisions of Civil Code section 43.92(a). First read CACI No. 503B, Affirmative Defense—Psychotherapist's Warning to Victim and Law Enforcement, if the therapist asserts that he or she is immune from liability under Civil Code section 43.92(b) by having made reasonable efforts to warn the victim and a law enforcement agency of the threat.
In a wrongful death case, insert the name of the decedent victim where applicable.

Sources and Authority

- Civil Code section 43.92(a) provides:
  "There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is a psychotherapist as defined in Section 1010 of the Evidence Code in failing to warn of and protect from a patient's threatened violent behavior or failing to predict and warn of and protect from a patient's violent behavior except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims."

- "[T]herapists cannot escape liability merely because [the victim] was not their patient. When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending upon the nature of the case. Thus it may call for him to warn the intended victim or others likely to apprise the victim of the danger, to notify the police, or to take whatever other steps are reasonably necessary under the circumstances." (Tarasoff, supra, 17 Cal.3d at p. 431.)

- Civil Code section 43.92 was enacted to limit the liability of psychotherapists under Tarasoff regarding a therapist's duty to warn an intended victim. (Barry v. Turek (1990) 218 Cal.App.3d 1241, 1244–1245 [267 Cal.Rptr. 553].) Under this provision, "[p]sychotherapists thus have immunity from Tarasoff claims except where the plaintiff proves that the patient has communicated to his or her psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims." (Barry, supra, 218 Cal.App.3d at p. 1245.)

- "When the communication of the serious threat of physical violence is received by the therapist from a member of the patient's immediate family and is shared for the purpose of facilitating and furthering the patient's treatment, the fact that the family member is not technically a 'patient' is not crucial to the statute's purpose." (Ewing v. Goldstein (2004) 120 Cal.App.4th 807, 817 [15 Cal.Rptr.3d 864].)

- "Section 43.92 strikes a reasonable balance in that it does not compel the therapist to predict the dangerousness of a patient. Instead, it requires the therapist to attempt to protect a victim under limited circumstances, even though the therapist's disclosure of a patient confidence will potentially 414 (Pub. 1283)
disrupt or destroy the patient’s trust in the therapist. However, the requirement is imposed upon the therapist only after he or she determines that the patient has made a credible threat of serious physical violence against a person." (Calderon v. Glick (2005) 131 Cal.App.4th 224, 231 [31 Cal.Rptr.3d 707].)

Secondary Sources
6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1050, 1051
26 California Forms of Pleading and Practice, Ch. 304, Insane and Other Incompetent Persons, § 304.93 (Matthew Bender)
11 California Points and Authorities, Ch. 117, Insane and Incompetent Persons: Actions Involving Mental Patients, § 117.30 (Matthew Bender)
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Existing Law:

1) Requires the director of the Department of Consumer Affairs to establish, by regulation, guidelines to prescribe components for mandatory continuing education programs administered by any board within the department. The guidelines shall be developed to ensure that mandatory continuing education is used as a means to create a more competent licensing population, thereby enhancing public protection. (Business and Professions Code §166)

2) Requires licensees of the Board of Behavioral Sciences (Board), upon renewal of their license, to certify to the Board that he or she has completed at least 36 hours of approved continuing education in or relevant to their field of practice. (BPC §§4980.54(c), 4989.34(a), 4996.22(a), 4999.76(a)).

3) Defines a continuing education “provider” as an accredited or approved school, or an association, health facility, governmental entity, educational institution, individual, or other organization that offers continuing education courses and meets certain course content and instructor qualifications criteria specified by the Board (California Code of Regulations (CCR) Title 16 §§1887(c), 1887.7)

4) Requires the Board to establish, by regulation, a procedure for approving providers of continuing education courses. (BPC §§4980.54(g), 4989.34(b)(2), 4996.22(e), 4999.76(e))

5) Defines the acceptable accrediting agencies that can approve a school’s education program in order for it to be accepted by the Board, for each of the various license types (BPC §§4980.36(b), 4980.37(b), 4980.40.5, 4991.2, 4999.12, CCR Title 16, §§1832, 1854) (See Attachment A for specific requirements for each license type.)

6) States that the system of continuing education shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served. (BPC §§ 4980.54(i), 4996.22(g), 4999.76(g))

7) Requires a provider of continuing education to ensure that the content of a course is relevant to the practice of marriage and family therapy, educational psychology, professional clinical counseling, or clinical social work and meets the requirements of each profession’s particular licensing law. The content of a course must also be related to direct or indirect patient/client care. (CCR Title 16, §1887.4)
8) Defines direct patient/client care courses as covering specialty areas of therapy (for example, theoretical frameworks for clinical practice, intervention techniques with individuals, couples or groups). (CCR Title 16, §1887.4)

9) Defines indirect patient/client care courses as covering pragmatic aspects of clinical practice (for example, legal or ethical issues, consultation, office management) (CCR Title 16, §1887.4)

**This Bill:**

1) Amends the law for LMFTs, LEPs, LCSWs, and LPCCs to require that continuing education must be obtained from either an accredited educational institution, or a continuing education provider that is approved by an accrediting organization, including, but not limited to, a professional association, a licensed health facility, a governmental entity, or a continuing education unit of an accredited educational institution. (BPC §§4980.54, 4989.34, 4996.22, 4999.76)

2) Removes the Board’s authority to approve providers of continuing education courses. (BPC §§4980.54, 4989.34, 4996.22, 4999.76)

**Comments:**

1) **Background.** Over the past year, questions have been raised concerning the nature of the Board’s continuing education course (CE) content requirements. Current law states that a CE course must be relevant to the profession, related to direct/indirect care and shall incorporate specific aspects of the discipline. By not requiring CE to meet standards usually utilized by accrediting bodies, such as requiring content to be derived from relevant peer-reviewed research literature, more innovative, and California specific CE may be presented. However, this approach also allows for CE providers to offer courses for Board credit that may include content not necessarily found to be best practices in the profession or scientifically based.

In July of this year the Board began receiving complaints from the public regarding the Board approved CE Provider National Association of Research and Therapy of Homosexuality (NARTH). Hundreds of emails were received from individuals protesting the approval of an organization that proffers “reparative” or “conversion” therapy for individuals that have unwanted homosexual tendencies.

NARTH received approval from the Board to offer CE courses in 1998. Since then, that approval has been renewed on a biennial basis. Renewal requires payment of $200, but no additional paperwork. NARTH’s CE provider approval expired October 31, 2010 and it was not renewed. Therefore, NARTH no longer possesses a valid provider number and is unable to provide CE courses to Board licensees for credit.

2) **Board Discretion over CE Providers.** The Board currently has the authority to approve CE providers. The Board’s ability to deny an application as a CE provider is governed by regulations which say the provider must ensure its coursework is relevant to a licensee’s practice and is related to direct or indirect patient care. The Board can only deny an application if it does not meet those standards.

According to current law, after receiving Board approval, providers can add new courses without submitting additional paperwork. There is nothing in laws and regulations to compel a provider to notify the Board when it adds new courses.
3) **Formation of Continuing Education Committee.** Board staff has identified a number of issues related to its continuing education program, and the Board has committed to taking action to address these problems. At its November 9, 2011 meeting, the Board voted to form a continuing education committee and mandated this committee to work with stakeholders and interested parties to develop legislation and regulations to address specified areas of concern.

The first public meeting of the continuing education committee was held April 18, 2012, with a number of stakeholders in attendance providing valuable input. Additional public meetings of the continuing education committee are set for May 31, 2012, and July 19, 2012.

The Board has used the committee process several times in the past, most recently in 2006-2008 to review and propose changes to marriage and family therapy (MFT) education curriculum, and in 2008-2009 to develop and propose restructuring of the Board’s examination process. Like the continuing education issue, these were both complex issues with many intricate details to consider. By allowing extensive discussion and feedback of proposed language from Board members, stakeholders, and staff, the Board was able to successfully propose legislation in both cases without opposition, and without creating undesirable unintended consequences or barriers to licensure.

Using the committee process to address the continuing education issue will allow all concerned and affected parties to scrutinize proposed changes carefully, have their concerns heard and addressed, and allows the proposed laws to evolve in order to address any unintended consequences that are raised.

4) **Accrediting Organization Not Defined.** Staff has a concern about a potential unintended effect that SB 1183 may have on the Board’s licensees and registrants. Currently, this bill proposes that CE may either be obtained from an accredited educational institution, or other CE providers “that are approved by accrediting organizations, including, but not limited to, a professional marriage and family therapist association, a licensed health facility, a governmental entity, a CE unit of an accredited four-year institution of higher learning, or a mental health professional association.”

This bill does not specifically define “accrediting organizations”. If standards for an accrediting organization remain unspecified, licensees may be permitted to obtain CE credit from any provider approved by an entity that calls itself an “accrediting organization.”

The lack of a definition and standards required of an accrediting entity could have one of two unintended consequences if this bill is implemented as written. It could allow for a broader variety of CE providers to claim they are “accredited,” resulting in a greater number of unqualified providers offering CE coursework. Conversely, if there are no entities to accredit qualified providers this bill could eliminate qualified providers if they cannot become “accredited.”

The Board currently has a combined total of approximately 70,000 active licensees and registrants. All of the licensees are required to complete 36 hours of CE every two years as a condition of renewing their license. Beginning January 1, 2013, all registrants will be required to pass a law and ethics exam within the first year of their registration. If they do not pass the exam, they must take a 12 hour law and ethics CE course in order to renew their registration.
It is imperative to these professional’s livelihood that they be able to remain licensed or registered. If they are not able to obtain CE courses, then the Board cannot renew the license or registration, creating a barrier to their employment. Staff suggests an amendment to clarify the acceptability of providers, in order to avoid unintentionally eliminating a number of valid CE providers that are not currently approved by an accrediting agency, making it difficult or nearly impossible for licensees and registrants to obtain the CE they need in order to renew.

5) Letter to Author and Response. On April 27, 2012, staff sent a letter to the Author’s office (Attachment B) detailing concerns with the current version of this bill and explaining the success the Board has had utilizing the committee process in the past. At a subsequent meeting, the Author’s office indicated they recognize these concerns and would like to incorporate the findings from the Board’s committee into a future version of the bill. They asked that staff assist them in drafting amendments that would achieve this.

6) Changes Unprecedented. This bill would remove the authority of the Board to set CE standards and requirements. Board staff has researched this issue and found that no other regulating entity under the Department of Consumer Affairs has had its authority to set CE standards and requirements removed. The Board is the sole regulating entity for LPCCs, LEPS, LCSWs, and LMFTs, and therefore possesses the experience and knowledge necessary to properly regulate its licensees. A statutory change is premature and imprudent at this time. The Board currently has explicit statutory authority to set CE standards and requirements through the rulemaking process, and is committed to doing so once the CE committee has made its recommendation to the Board. Board staff believes that this unprecedented deletion of the Board’s statutory authority to regulate its licensees in this area is cause for serious concern.

7) Recommended Position. At its April 19, 2012 meeting, the Policy and Advocacy Committee did not recommend a position on this bill, but requested that the Board further discuss the policy implications of this legislation.

For the reasons specified in Items 5 and 6 above, staff recommends that the Board direct staff to continue working through the issue of CE standards and requirements through the CE committee. It is premature at this time to recommend any amendments to SB 1183 since the committee has not had adequate time to consider and discuss all of the issues relating to the CE approval process. The Committee estimates that it should have a recommendation to bring to the Board in September. The author’s office has requested that Board staff continue to work with them on an ongoing basis and has expressed willingness to work with the Board to incorporate into statute the CE committee’s recommendation this year or next year if possible. While Board staff appreciates this willingness to work with us, we do not believe that statutory changes are necessary, but rather that these changes should be made through the rulemaking process.

8) Support and Opposition.

Support:
- None on file.

Oppose:
- None on file.
9) History

2012
Apr. 30  Read second time and amended. Re-referred to Com. on APPR.
Apr. 26  From committee: Do pass as amended and re-refer to Com. on APPR.
         (Ayes 5. Noes 3.) (April 23).
Apr. 13  Set for hearing April 23.
Apr. 12  From committee with author’s amendments. Read second time and
         amended. Re-referred to Com. on B., P. & E.D.
Mar. 29  Re-referred to Com. on B., P. & E.D.
Mar. 26  From committee with author’s amendments. Read second time and
         amended. Re-referred to Com. on RLS.
Mar.  1  Referred to Com. on RLS.
Feb. 23  From printer. May be acted upon on or after March 24.
Feb. 22  Introduced. Read first time. To Com. on RLS. for assignment. To
         print.

10) Attachments

Attachment A: Board Laws and Regulations Defining Acceptable Accrediting Agencies
Attachment B: Staff Letter to Senator Lieu’s Office, April 27, 2012
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An act to amend Sections 4980.54 and 4989.34, 4996.22, and 4999.76 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL’S DIGEST


Existing law provides for the licensure and regulation of marriage and family therapists, educational psychologists, clinical social workers, and professional clinical counselors by the Board of Behavioral Sciences and imposes continuing education requirements for license renewal. Existing law specifies that certain accredited schools shall be deemed to be approved continuing education providers for these licensees. Existing law requires the board to approve other continuing education providers and authorizes the board to revoke or deny the right of those providers to offer coursework if they fail to comply with specified requirements.

This bill would require continuing education providers other than accredited educational institutions and certain other institutions to be approved by an accrediting organization, and would delete the requirement for the board to approve or revoke those providers. The bill would make other conforming changes.
The people of the State of California do enact as follows:

SECTION 1. Section 4980.54 of the Business and Professions Code is amended to read:

4980.54. (a) The Legislature recognizes that the education and experience requirements in this chapter constitute only minimal requirements to assure that an applicant is prepared and qualified to take the licensure examinations as specified in subdivision (d) of Section 4980.40 and, if he or she passes those examinations, to begin practice.

(b) In order to continuously improve the competence of licensed marriage and family therapists and as a model for all psychotherapeutic professions, the Legislature encourages all licensees to regularly engage in continuing education related to the profession or scope of practice as defined in this chapter.

(c) Except as provided in subdivision (e), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of marriage and family therapy in the preceding two years, as determined by the board.

(d) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(e) The board may establish exceptions from the continuing education requirements of this section for good cause, as defined by the board.

(f) The continuing education shall be obtained from one of the following sources:

1. An accredited educational institution that meets the requirements set forth in Section 4980.36 or 4980.37. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.
(2) Other continuing education providers that are approved by accrediting organizations, including, but not limited to, a professional marriage and family therapist association, a licensed health facility, a governmental entity, a continuing education unit of an accredited four-year institution of higher learning, or a mental health professional association.

(g) Training, education, and coursework by approved providers shall incorporate one or more of the following:

1. Aspects of the discipline that are fundamental to the understanding or the practice of marriage and family therapy.
2. Aspects of the discipline of marriage and family therapy in which significant recent developments have occurred.
3. Aspects of other disciplines that enhance the understanding or the practice of marriage and family therapy.

(h) A system of continuing education for licensed marriage and family therapists shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(i) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For purposes of this subdivision, a provider of continuing education as described in paragraphs (1) and (2) of subdivision (f) shall be deemed to be an approved provider.

(j) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

SEC. 2. Section 4989.34 of the Business and Professions Code is amended to read:

4989.34. (a) To renew his or her license, a licensee shall certify to the board, on a form prescribed by the board, completion in the preceding two years of not less than 36 hours of approved continuing education in, or relevant to, educational psychology.

(b) The continuing education shall be obtained from either an accredited university or a continuing education provider that is approved by the board.
(2) The board shall establish, by regulation, a procedure for
approving providers of continuing education courses, and all
providers of continuing education shall comply with procedures
established by the board. The board may revoke or deny the right
of a provider to offer continuing education coursework pursuant
to this section for failure to comply with the requirements of this
section or any regulation adopted pursuant to this section.

(c) Training, education, and coursework by approved providers
shall incorporate one or more of the following:

1. Aspects of the discipline that are fundamental to the
understanding or the practice of educational psychology.

2. Aspects of the discipline of educational psychology in which
significant recent developments have occurred.

3. Aspects of other disciplines that enhance the understanding
or the practice of educational psychology.

(d) The board may audit the records of a licensee to verify
completion of the continuing education requirement. A licensee
shall maintain records of the completion of required continuing
education coursework for a minimum of two years and shall make
these records available to the board for auditing purposes upon its
request.

(e) The board may establish exceptions from the continuing
education requirements of this section for good cause, as
determined by the board.

(f) The board shall, by regulation, fund the administration of
this section through continuing education provider fees to be
deposited in the Behavioral Sciences Fund. The amount of the fees
shall be sufficient to meet, but shall not exceed, the costs of
administering this section.

(g) The continuing education requirements of this section shall
comply fully with the guidelines for mandatory continuing
education established by the Department of Consumer Affairs
pursuant to Section 166.

SEC. 2.

SEC. 3. Section 4996.22 of the Business and Professions Code
is amended to read:

4996.22. (a) (1) Except as provided in subdivision (c), the
board shall not renew any license pursuant to this chapter unless
the applicant certifies to the board, on a form prescribed by the
board, that he or she has completed not less than 36 hours of
approved continuing education in or relevant to the field of social
work in the preceding two years, as determined by the board.

(2) The board shall not renew any license of an applicant who
began graduate study prior to January 1, 2004, pursuant to this
chapter unless the applicant certifies to the board that during the
applicant’s first renewal period after the operative date of this
section, he or she completed a continuing education course in
spousal or partner abuse assessment, detection, and intervention
strategies, including community resources, cultural factors, and
same gender abuse dynamics. On and after January 1, 2005, the
course shall consist of not less than seven hours of training.
Equivalent courses in spousal or partner abuse assessment,
detection, and intervention strategies taken prior to the operative
date of this section or proof of equivalent teaching or practice
experience may be submitted to the board and at its discretion,
may be accepted in satisfaction of this requirement. Continuing
education courses taken pursuant to this paragraph shall be applied
to the 36 hours of approved continuing education required under
paragraph (1).

(b) The board shall have the right to audit the records of any
applicant to verify the completion of the continuing education
requirement. Applicants shall maintain records of completion of
required continuing education coursework for a minimum of two
years and shall make these records available to the board for
auditing purposes upon request.

(c) The board may establish exceptions from the continuing
education requirement of this section for good cause as defined
by the board.

(d) The continuing education shall be obtained from one of the
following sources:

(1) An accredited school of social work, as defined in Section
4991.2, or a school or department of social work that is a candidate
for accreditation by the Commission on Accreditation of the
Council on Social Work Education. Nothing in this paragraph shall
be construed as requiring coursework to be offered as part of a
regular degree program.

(2) Other continuing education providers that are approved by
accrediting organizations, including, but not limited to, a
professional social work association, a licensed health facility, a
governmental entity, a continuing education unit of an accredited
four-year institution of higher learning, and a mental health
professional association.
(e) Training, education, and coursework by approved providers
shall incorporate one or more of the following:
(1) Aspects of the discipline that are fundamental to the
understanding, or the practice, of social work.
(2) Aspects of the social work discipline in which significant
recent developments have occurred.
(3) Aspects of other related disciplines that enhance the
understanding, or the practice, of social work.
(f) A system of continuing education for licensed clinical social
workers shall include courses directly related to the diagnosis,
assessment, and treatment of the client population being served.
(g) The continuing education requirements of this section shall
comply fully with the guidelines for mandatory continuing
education established by the Department of Consumer Affairs
pursuant to Section 166.
(h) The board may adopt regulations as necessary to implement
this section.
(i) The board shall, by regulation, fund the administration of
this section through continuing education provider fees to be
deposited in the Behavioral Science Examiners Fund. The fees
related to the administration of this section shall be sufficient to
meet, but shall not exceed, the costs of administering the
corresponding provisions of this section. For purposes of this
subdivision, a provider of continuing education as described in
paragraphs (1) and (2) of subdivision (d) shall be deemed to be an
approved provider.
SEC. 4. Section 4999.76 of the Business and Professions Code
is amended to read:
4999.76. (a) (1) Except as provided in paragraph (2) and
subdivision (c), the board shall not renew any license pursuant to
this chapter unless the applicant certifies to the board, on a form
prescribed by the board, that he or she has completed not less than
36 hours of approved continuing education in or relevant to the
field of professional clinical counseling in the preceding two years,
as determined by the board.
(2) Except as provided in subdivision (c), the board shall not
renew a license issued pursuant to paragraph (1) of subdivision
(a) of Section 4999.54 unless the applicant certifies to the board,
on a form prescribed by the board, that he or she has completed not less than 18 hours of approved continuing education in or relevant to the field of professional clinical counseling in the preceding year, as determined by the board. This paragraph shall become inoperative on January 1, 2018.

(b) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completed continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(c) The board may establish exceptions from the continuing education requirement of this section for good cause, as defined by the board.

(d) The continuing education shall be obtained from one of the following sources:

1. A school, college, or university that is accredited or approved, as defined in Section 4999.12. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

2. Other continuing education providers that are approved by accrediting organizations, including, but not limited to, a professional clinical counseling association, a licensed health facility, a governmental entity, a continuing education unit of a four-year institution of higher learning that is accredited or approved, or a mental health professional association, approved by the board.

(e) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (d), shall adhere to procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

(f) Training, education, and coursework by approved providers shall incorporate one or more of the following:

1. Aspects of the discipline that are fundamental to the understanding or the practice of professional clinical counseling.
(2) Significant recent developments in the discipline of professional clinical counseling.

(3) Aspects of other disciplines that enhance the understanding or the practice of professional clinical counseling.

(f) A system of continuing education for licensed professional clinical counselors shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(g) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For the purposes of this subdivision, a provider of continuing education as described in paragraph paragraphs (1) and (2) of subdivision (d) shall be deemed to be an approved provider.

(h) The continuing education requirements of this section shall fully comply with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.
Attachment A: Board Laws and Regulations Defining Acceptable Accrediting Agencies

**LMFTs**

**Business and Professions Code (BPC) §4980.36(b)** To qualify for a license or registration, applicants shall possess a doctor's or master's degree meeting the requirements of this section in marriage, family, and child counseling, marriage and family therapy, couple and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university approved by the Bureau for Private Postsecondary Education or accredited by either the Commission on the Accreditation of Marriage and Family Therapy Education or a regional accrediting agency recognized by the United States Department of Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval.

**BPC §4980.37(b)** To qualify for a license or registration, applicants shall possess a doctor's or master's degree in marriage, family, and child counseling, marriage and family therapy, couple and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university accredited by a regional accrediting agency recognized by the United States Department of Education or approved by the Bureau for Private Postsecondary Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval. In order to qualify for licensure pursuant to this section, a doctor's or master's degree program shall be a single, integrated program primarily designed to train marriage and family therapists and shall contain no less than 48 semester or 72 quarter units of instruction. This instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment. The coursework shall include all of the following areas:

1. The salient theories of a variety of psychotherapeutic orientations directly related to marriage and family therapy, and marital and family systems approaches to treatment.

2. Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

3. Developmental issues and life events from infancy to old age and their effect on individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families, stepparenting, abuse and neglect of older and dependent adults, and geropsychology. (4) A variety of approaches to the treatment of children. The board shall, by regulation, set forth the subjects of instruction required in this subdivision.

**BPC §4980.40.5**

(a) A doctoral or master's degree in marriage, family, and child counseling, marital and family therapy, couple and family therapy, psychology, clinical psychology, counseling psychology, or
counseling with an emphasis in either marriage, family, and child counseling, or marriage and family therapy, obtained from a school, college, or university approved by the Bureau for Private Postsecondary Education as of June 30, 2007, shall be considered by the board to meet the requirements necessary for licensure as a marriage and family therapist and for registration as a marriage and family therapist intern provided that the degree is conferred on or before July 1, 2010.

(b) As an alternative to meeting the qualifications specified in subdivision (a) of Section 4980.40, the board shall accept as equivalent degrees those doctoral or master’s degrees that otherwise meet the requirements of this chapter and are conferred by educational institutions accredited by any of the following associations:

(1) Northwest Commission on Colleges and Universities.

(2) Middle States Association of Colleges and Secondary Schools.

(3) New England Association of Schools and Colleges.


(5) Southern Association of Colleges and Schools.

California Code of Regulations (CCR) Title 16, §1832. EQUIVALENT ACCREDITING AGENCIES
The following accrediting agencies are essentially equivalent to Western College Association, which has been renamed the Western Association of Schools and Colleges, and Northwest Association of Secondary and Higher Schools:

(a) Middle States Association of Colleges and Secondary Schools.

(b) New England Association of Schools and Colleges.

(c) North Central Association of Colleges and Secondary Schools.

(d) Southern Association of Colleges and Schools.

(e) The Credentials Evaluation Service of the International Education Research Foundation, Inc. when it evaluates the foreign degree as being equivalent to the required degrees, and those foreign degree programs meet the educational requirements for equivalent degrees and the specific course content and educational requirements as set forth in sections 4980.40 and 4980.41 of the Code.

(f) State of California, Department of Education, Bureau of School Approvals with respect to its functions under Education Code section 29023(a)(2), when applied to master's degree and/or doctoral programs which meet the requirements for an equivalent degree pursuant to section 1830 of these regulations, and the specific course content and educational requirements as set forth in sections 4980.40 and 4980.41, of the Code.

Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code. Reference: Sections 4980.40, 4980.41, and 4999.12, Business and Professions Code.
LEPs

CCR Title 16, §1854. EQUIVALENT DEGREES
Educational institutions approved by the board are defined as a college or university accredited by one of the following agencies:

(a) Western Association of Schools and Colleges.

(b) Northwest Association of Secondary and Higher Schools.

(c) Middle States Association of Colleges and Secondary Schools.

(d) New England Association of Colleges and Secondary Schools.

(e) North Central Association of Colleges and Secondary Schools.

(f) Southern Association of Colleges and Schools.

(g) The Credentials Evaluation Service of the International Education Research Foundation, Inc., where it evaluates the foreign degree as being equivalent to the required degree or degrees.

Note: Authority cited: Section 4990.20(a), Business and Professions Code. Reference: Section 4989.20(a)(1), Business and Professions Code.

LCSWs

BPC §4991.2 "Accredited school of social work," within the meaning of this chapter, is a school that is accredited by the Commission on Accreditation of the Council on Social Work Education.

LPCCs

BPC §4999.12

(b) "Accredited" means a school, college, or university accredited by the Western Association of Schools and Colleges, or its equivalent regional accrediting association.

(c) "Approved" means a school, college, or university that possessed unconditional approval by the Bureau for Private Postsecondary Education at the time of the applicant’s graduation from the school, college, or university.
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April 27, 2012

Senator Ted Lieu
State Capitol, Room 4090
Sacramento, CA 95814

RE: SB 1183

Dear Senator Lieu,

As Executive Officer of the Board of Behavioral Sciences (Board), I would like to address two serious concerns regarding the current version of SB 1183. Although the Board has not taken an official position on this bill yet, it will be discussed at our May 16th and 17th, 2012 board meeting.

SB 1183 would remove the Board's authority to approve continuing education (CE) providers, and instead require that Board licensees obtain their required CE from an accredited educational institution, or a CE provider that is approved by an accrediting organization, such as a professional association, a licensed health facility, a governmental entity, or a continuing education unit of an accredited educational institution.

Effectiveness of the Committee Process

Board staff has identified a number of issues related to its CE program, and is committed to taking action to address these problems. At its November 9, 2011 meeting, the Board voted to form a CE committee and mandated that this committee work with stakeholders and interested parties to develop legislation and regulations to address specified areas of concern.

Since the November 2011 meeting, the Board has dedicated hundreds of staff and board member work hours to study the issues of this committee, with a heavy focus on the provider approval process and an extensive study of how other Boards, such as psychology and pharmacy, determine the acceptability of CE providers. To date, staff has held two brainstorming meetings with the two committee members to discuss the findings of this research. The first public meeting of the CE committee was held April 18, 2012, with a number of stakeholders in attendance providing valuable input. Additional public meetings of the CE committee are set for May 31, 2012, and July 19, 2012.

The Board has used the committee process several times in the past, most recently in 2006-2008 to review and propose changes to marriage and family therapy (MFT) education curriculum, and in 2008-2009 to develop and propose restructuring of the Board's examination process. Like the CE issue, these were both complex issues with many intricate details to consider. By allowing extensive discussion and feedback of proposed language from Board members, stakeholders, and staff, the Board was able to successfully propose legislation in both cases without opposition, and without creating undesirable unintended consequences or barriers to licensure.
The Board remains strongly committed to using the committee method to discuss the CE issue, because the proposed changes to laws and regulations are extensive, complex and controversial. The committee format allows all concerned and affected parties to scrutinize proposed changes carefully, have their concerns heard and addressed, and allows the proposed laws to evolve in order to address any unintended consequences that are raised.

**Effect on Board Licensees and Registrants**

A second concern relates to an unintended effect that SB 1183 may have on the Board’s licensees and registrants. Currently, this bill proposes that CE may either be obtained from an accredited educational institution, or other CE providers “that are approved by accrediting organizations, including, but not limited to, a professional marriage and family therapist association, a licensed health facility, a governmental entity, a CE unit of an accredited four-year institution of higher learning, or a mental health professional association.”

This bill does not specifically define “accrediting organizations.” If standards for an accrediting organization remain unspecified, licensees may be permitted to obtain CE credit from any provider approved by an entity that calls itself an “accrediting organization.”

The lack of a definition and standards required of an accrediting entity could have one of two unintended consequences if this bill is implemented as written. It could allow for a broader variety of CE providers to claim they are “accredited,” resulting in a greater number of unqualified providers offering CE coursework. Conversely, if there are no entities to accredit qualified providers this bill could eliminate qualified providers if they cannot become “accredited.”

The Board currently has a combined total of approximately 70,000 active licensees and registrants. All of the licensees are required to complete 36 hours of CE every two years as a condition of renewing their license. Beginning January 1, 2013, all registrants will be required to pass a law and ethics exam within the first year of their registration. If they do not pass the exam, they must take a 12 hour law and ethics CE course in order to renew their registration.

It is imperative to these professionals’ livelihood that they be able to remain licensed or registered. If they are not able to obtain CE courses, then the Board cannot renew the license or registration, creating a barrier to their employment. We strongly suggest that the acceptability of providers be clarified, in order to avoid unintentionally eliminating a number of valid CE providers that are not currently approved by an accrediting agency, making it difficult or nearly impossible for our licensees and registrants to obtain the CE they need in order to renew.

**Proposed Solution**

We would like to suggest compromise language that both allows the Board to continue its committee process to draft legislation, and allows the legislature to protect the public from potentially unfit CE providers. The language we suggest is as follows:

“*This section would become operative on January 1, 2015, only if the Board fails, by this date, to establish and make effective, by legislation and regulations, changes to its continuing education program that meet the following criteria:*

a) *Establishes specific standards and guidelines that every continuing education provider must meet,* and

b) *Allows oversight and review of individual courses offered for continuing education credit on an ongoing basis.*”
This compromise would recognize the intent of the legislature to ensure the quality and content of CE is subject to a stringent review process, while allowing the Board’s CE committee to continue its work to craft legislation that effectively addresses all of the many and complex issues related to continuing education.

Please feel free to contact me at (916) 574-7841 if you have any questions.

Sincerely,

Kim Madsen
Executive Officer.

CC: American Association for Marriage and Family Therapy – California Division
    California Association for Licensed Professional Clinical Counselors
    California Association of Licensed Educational Psychologists
    California Association of Marriage and Family Therapists
    California Association of School Psychologists
    California Society for Clinical Social Work
    National Association of Social Workers – California Chapter
Existing Law

1) Provides for the licensure and regulation of educational psychologists, clinical social workers, professional clinical counselors, and marriage and family therapists by the Board of Behavioral Sciences (Board) within the Department of Consumer Affairs until January 1, 2013.

2) Specifies the composition of the Board and authorizes the Board to employ an Executive Officer (Business and Professions Code (BPC) §§4990, 4990.04)

This Bill:

1) Extends the operation of the Board until January 1, 2017, and specifies that the Board is subject to review by the appropriate policy committees of the Legislature. (BPC §§4990, 4990.04)

Comment:

1) Background. In 1994, the legislature enacted the “sunset review” process, which permits the periodic review of the need for licensing and regulation of a profession and the effectiveness of the administration of the law by the licensing board. The Joint Legislative Sunset Review Committee (Joint Committee) was tasked with performing the sunset reviews. The sunset review process was in part built on an assumption in law that if a board is operating poorly, and lesser measures have been ineffective in rectifying the problems, the board should be allowed to sunset.

Boards notified by the Joint Committee were requested to provide a detailed report regarding the board’s operations and programs. Following submission of the report to the Joint Committee, a hearing was scheduled with the Joint Committee to discuss the report and any recommendations of the Joint Committee. If it was determined that a board should not continue to regulate the profession, the board would sunset. Boards within the Department of Consumer Affairs (DCA) that were required to sunset became a bureau under DCA, reporting directly to the DCA director. The Board of Behavioral Sciences went through sunset review successfully in 1997, 2005, and 2006. Since 2006, the Legislature had not conducted any sunset review hearings.

2) March 2012 Sunset Review Hearing. In May 2011, the Senate Committee on Business, Professions, and Economic Development (Committee) notified the Board that it would be one of nine boards reviewed in 2012. The Committee requested the Board prepare a
comprehensive report containing information regarding the Board’s history, activities, statistical information, and current issues. This report was submitted to the Committee on November 1, 2011.

The Board’s sunset hearing before the Senate Committee on Business, Professions, and Economic Development was held on March 19, 2012. Based on the findings of the Committee it was recommended that the Board’s sunset date be extended for four years, to January 1, 2017.

3) Previous Legislation. SB 294 (Chapter 695, Statutes of 2010) extended the Board’s sunset date from January 1, 2011 until January 1, 2013.

4) Recommended Position. At its meeting on April 19, 2012, the Policy and Advocacy Committee recommended that the Board take a support position on this bill.

5) Support and Opposition.

Support:
- Board of Behavioral Sciences
- Board of Psychology
- Alameda County Psychological Association
- California Psychological Association- Independent Practice Division
- Contra Costa Psychological Association
- Los Angeles County Psychological Association
- Marin County Psychological Association
- Monterey Bay Psychological Association
- Redwood Psychological Association
- Sacramento Valley Psychological Association
- San Joaquin Valley Psychological Association
- San Mateo County Psychological Association

Opposition:
- None on File.

6) History.

2012
Apr. 27 Set for hearing May 7.
Apr. 24 From committee: Do pass and re-refer to Com. on APPR. (Ayes 7. Noes 0. Page 3260.) (April 23). Re-referred to Com. on APPR.
Apr. 11 Set for hearing April 23.
Mar. 8 Referred to Com. on B., P. & E.D.
Feb. 24 From printer. May be acted upon on or after March 25.
Feb. 23 Introduced. Read first time. To Com. on RLS. for assignment. To print.
SENATE BILL No. 1238

Introduced by Senator Price

February 23, 2012

An act to amend Sections 2920, 2933, 4990, and 4990.04 of the Business and Professions Code, relating to professions.

LEGISLATIVE COUNSEL’S DIGEST

SB 1238, as introduced, Price. Professions: Board of Psychology: Board of Behavioral Sciences.

Existing law provides for the licensure and regulation of psychologists by the Board of Psychology. Existing law provides for the licensure and regulation of educational psychologists, social workers, and marriage and family therapists by the Board of Behavioral Sciences within the Department of Consumer Affairs. Existing law specifies the composition of each board and authorizes each board to employ an executive officer. Existing law repeals these provisions on January 1, 2013. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of these provisions until January 1, 2017. This bill would specify that each board is subject to review by the appropriate policy committees of the Legislature.


The people of the State of California do enact as follows:

1 SECTION 1. Section 2920 of the Business and Professions Code is amended to read:
2920. (a) The Board of Psychology shall enforce and administer this chapter. The board shall consist of nine members, four of whom shall be public members.

(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date. Notwithstanding any other provision of law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 2. Section 2933 of the Business and Professions Code is amended to read:

2933. Except as provided by Section 159.5, the board shall employ and shall make available to the board within the limits of the funds received by the board all personnel necessary to carry out this chapter. The board may employ, exempt from the State Civil Service Act, an executive officer to the Board of Psychology. The board shall make all expenditures to carry out this chapter. The board may accept contributions to effectuate the purposes of this chapter.

This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 3. Section 4990 of the Business and Professions Code is amended to read:

4990. (a) There is in the Department of Consumer Affairs, a Board of Behavioral Sciences that consists of the following members:

(1) Two state licensed clinical social workers.
(2) One state licensed educational psychologist.
(3) Two state licensed marriage and family therapists.
(4) Commencing January 1, 2012, one state licensed professional clinical counselor.
(5) Seven public members.

(b) Each member, except the seven public members, shall have at least two years of experience in his or her profession.
(c) Each member shall reside in the State of California.
(d) The Governor shall appoint five of the public members and the six licensed members with the advice and consent of the Senate.
The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(e) Each member of the board shall be appointed for a term of four years. A member appointed by the Speaker of the Assembly or the Senate Committee on Rules shall hold office until the appointment and qualification of his or her successor or until one year from the expiration date of the term for which he or she was appointed, whichever first occurs. Pursuant to Section 1774 of the Government Code, a member appointed by the Governor shall hold office until the appointment and qualification of his or her successor or until 60 days from the expiration date of the term for which he or she was appointed, whichever first occurs.

(f) A vacancy on the board shall be filled by appointment for the unexpired term by the authority who appointed the member whose membership was vacated.

(g) Not later than the first of June of each calendar year, the board shall elect a chairperson and a vice chairperson from its membership.

(h) Each member of the board shall receive a per diem and reimbursement of expenses as provided in Section 103.

(i) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

(j) Notwithstanding any other provision of law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 4. Section 4990.04 of the Business and Professions Code is amended to read:

4990.04. (a) The board shall appoint an executive officer. This position is designated as a confidential position and is exempt from civil service under subdivision (e) of Section 4 of Article VII of the California Constitution.

(b) The executive officer serves at the pleasure of the board.

(c) The executive officer shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(d) With the approval of the director, the board shall fix the salary of the executive officer.
(e) The chairperson and executive officer may call meetings of
the board and any duly appointed committee at a specified time
and place. For purposes of this section, “call meetings” means
setting the agenda, time, date, or place for any meeting of the board
or any committee.

(f) This section shall remain in effect only until January 1, 2013
2017, and as of that date is repealed, unless a later enacted statute,
that is enacted before January 1, 2013 2017, deletes or extends
that date.
To: Board Members

From: Rosanne Helms
Legislative Analyst

Subject: Legislative Update

Date: May 2, 2012

Telephone: (916) 574-7897

The Board is currently pursuing the following legislative proposals:

**SB 632 (Emmerson) Marriage and Family Therapist Trainee Practicum**
Board-sponsored SB 363 (Chapter 384, Statutes of 2011) became law on January 1, 2012. It allows a trainee to counsel clients while not enrolled in practicum only if the lapse in enrollment is less than 90 days and is immediately proceeded and followed by enrollment in practicum.

Because the requirement to be enrolled in practicum to counsel clients only applies to specified MFT trainees, (individuals that begin graduate study after August 1, 2012; individuals that begin graduate study before August 1, 2012 but do not complete that study before December 31, 2018; and, individuals that attend a graduate program that meets the enhanced requirements required by Business and Professions Code Section 4980.36) an exception from the requirement should have only applied to those specific MFT trainees. However, the effect of the language signed into law with SB 363 instead requires all trainees to be enrolled in practicum to counsel clients regardless of when that individual began graduate study.

This bill is an urgency measure which will amend this section of licensing law and restore the original intent of requiring only specified MFT trainees to enroll in practicum to counsel clients.

Status: This bill has been referred to the Assembly Business, Professions, and Consumer Protection Committee.

**SB 1527 (Negrete McLeod) Social Workers: Licensing**
As part of the Board’s examination restructure which becomes effective on January 1, 2013, each associate social worker (ASW) will be required to take and pass a California law and ethics examination. This bill adds a requirement, similar to the ones in the LMFT and LPCC licensing laws, that an individual seeking ASW registration or LCSW licensure complete coursework in California law and ethics.

This bill would also clarify the acceptability of older licensing exam scores. Under the examination restructure, the Board may use national examinations as the clinical examinations, if the Board determines that they meet California standards. However, SB 704 did not place a limit on when a
passing score on the clinical exam must have been obtained. In order to address the question about
the acceptability of older exam scores, this bill does the following:

- For applicants who do not hold an out of state license, allows a passing score on the clinical exam
to be accepted by the Board for seven years.

- For applicants who already hold a valid license in good standing in another state, who had passed
the exam the Board is requiring as part of their requirements for licensure in that other state, the
Board may accept that exam score regardless of age.

*Status: This bill is on third reading in the Senate.*

**SB 1575 (Senate Business, Professions, and Economic Development Committee) Omnibus
Legislation**

This bill proposal, approved by the Board at its November 9, 2011 meeting, makes minor, technical,
and non-substantive amendments to add clarity and consistency to current licensing law.

*Status: This has been referred to the Senate Appropriations Committee.*
To: Board Members  
From: Rosanne Helms  
Legislative Analyst  

Subject: Rulemaking Update

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**APPROVED BY OFFICE OF ADMINISTRATIVE LAW (OAL)**

*Title 16, CCR Sections 1832.5, 1889.2, Technical and Nonsubstantive Regulatory Changes*

This proposal made technical and non-substantive amendments to Board regulations that were needed due to recent statutory changes. This proposal was approved by the Board at its meeting on August 18, 2011. It was approved by OAL and filed with the Secretary of State on March 7, 2012.

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**SUBMITTED TO OAL**

*Title 16, CCR Sections 1803, 1845, 1858, 1881; Add Sections 1823, 1888.1, SB 1111 Enforcement Regulations*

This proposal is part of an effort by DCA for healing arts boards to individually seek regulations to implement those provisions of SB 1111 and SB 544 (part of DCA’s Consumer Protection Enforcement Initiative) that do not require statutory authority.

The intent of SB 1111, which failed passage in 2010, and SB 544, which failed passage in 2011, was to provide healing arts boards under DCA with additional authority and resources to make the enforcement process more efficient. These regulations propose delegation of certain functions to the executive officer, required actions against registered sex offenders, and additional unprofessional conduct provisions to aid in the enforcement streamlining effort.

This proposal was approved by the Board at its meeting on August 18, 2011. This rulemaking was submitted to OAL and published in its California Regulatory Notice Register on March 16, 2012. The proposal is now through the 45-day public comment period, and the public hearing was held on May 1, 2012. Board staff is now reviewing comments that were received at the public hearing.

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**PENDING REGULATORY PROPOSALS**

*Title 16, CCR Section 1887.3, HIV/AIDS Continuing Education Course for LPCCs*

This proposal revises current Board regulations to include LPCCs in the requirement to take a one-time, seven hour continuing education course covering the assessment and treatment of
people living with HIV/AIDS. The Board approved the proposed text at its February 23, 2011 meeting and directed staff to submit a regulation package to make the proposed change. This rulemaking will be submitted to OAL for initial notice in spring 2012.

**Title 16, CCR Section 1811, Revision of Advertising Regulations**
This proposal revises the regulatory provisions related to advertising by Board Licensees. The Board approved the originally proposed text at its meeting on November 18, 2008. Due to changes in regulations from the LPCC regulation package as well as other changes to the proposed text, staff obtained approval to a revised version of this rulemaking proposal at the August 18, 2011 Board meeting. This rulemaking will be submitted to OAL for initial notice in spring 2012.

**Title 16, CCR Sections 1870, 1874, Two-Year Practice Requirement for Supervisors of Associate Social Workers (ASWs)**
This proposal, approved by the Board in June 2007, requires supervisors of ASWs to be licensed for two years prior to commencing any supervision. This rulemaking will be submitted to OAL for initial notice in spring 2012.

**Title 16, CCR Sections 1806, 1816, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1829, 1877; Add Section 1825, Regulations to Implement SB 704**
This proposal revises current Board regulations in order to be consistent with the statutory changes made by SB 704 (Chapter 387, Statutes of 2011), which restructures the examination process for LMFT, LCSW, and LPCC applicants. This proposal was approved by the Board at its meeting on November 9, 2011 and will be submitted to OAL for initial notice in spring 2012.

**Title 16, CCR Section 1833, Regulations to Implement SB 363**
SB 363 (Chapter 384, Statutes of 2011) limited the number of client-centered advocacy hours for a marriage and family therapist intern to 500 hours.

This proposal deletes a provision of Board regulations which conflicts with SB 363 and that is no longer needed due to the new legislative provisions enacted by SB 363. This amendment was approved by Board at its meeting on November 9, 2011. This proposal also deletes an outdated provision in Section 1833 regarding crisis counseling on the telephone, which directly conflicts with telehealth provisions in LMFT licensing law. This amendment was approved by the Board at its meeting on February 29, 2012.

This regulatory proposal will be submitted to OAL for initial notice in spring 2012.

**Title 16, CCR Section 1888 and Disciplinary Guidelines, Enforcement Regulations**
This proposal makes several revisions to the Disciplinary Guidelines, which are incorporated by reference into Board regulations. This proposal was approved by the Board at its meeting on November 9, 2011 and will be submitted to OAL for initial notice in summer 2012.

**Title 16, CCR Sections 1820, 1820.1, 1820.2, 1820.3, Exemptions for Sponsored Free Health Care Events**
As a result of AB 2699 (Chapter 270, Statutes of 2010), beginning January 1, 2011, health care practitioners licensed or certified in good standing in another state may be temporarily exempted from California licensing requirements under certain conditions. However, before this law can be implemented, regulations must be approved by each healing arts board under DCA which specify the methods of implementation. This proposal was approved by the Board at its meeting on November 9, 2011 and will be submitted to OAL for initial notice in spring 2012.
At its November 9, 2011 meeting, the Board approved several amendments to the Disciplinary Guidelines. The Disciplinary Guidelines are incorporated by reference into Board regulations. The proposed amendments were based on suggestions from the Board’s enforcement unit. Staff is now in the process of preparing a regulatory package to make the proposed amendments.

The enforcement unit has proposed two additional amendments to the Disciplinary Guidelines. Because a regulatory proposal can take up to one year to obtain approval from the Office of Administrative Law (OAL), and because only one proposal affecting any particular regulatory code section can be run at a time, staff recommends that these additional proposals be considered for inclusion in the existing regulatory proposal to amend the Disciplinary Guidelines. The additional amendments are as follows:

1. Recommended Language for Tolling of Probation

2. Recommended Language for Disciplinary Orders

**Recommended Language for Tolling of Probation**

The Board’s Disciplinary Guidelines (Revised March 2010) contain specific language for standard terms and conditions of probation, which are included in all disciplinary decisions.

Two of the standard terms and conditions, “Residing or Practicing Out of State” and “Failure to Practice – California Resident,” allow a registrant or licensee to “toll” their probation if they are not practicing. Tolling probation stops the clock on a practitioner’s probation term until they resume practice. The tolled period is then added to the end of the probation and extends the expiration date.

The “Residing or Practicing Out of State” condition includes language which allows the Board to cancel a license or registration after two years if the respondent does not return to California and resume practice.

The “Failure to Practice – California Resident” condition does not delineate a time limit on non-practice, as long as the licensee or registrant is residing in California. Therefore, probationers can continue in their “toll” status indefinitely or until their registration or license expires by operation of law.
Although the current disciplinary guidelines specify that time spent outside the state in an intensive training program is not to be considered non-practice, staff has never encountered a probationer who was in an intensive training program outside California. The current guidelines also state a respondent’s license must not be cancelled if he or she is residing and practicing in another state and is on active probation with the licensing authority of that state. Staff has also never encountered a probationer who was practicing in another state and on active probation with licensing authority in that state.

Board staff is experiencing an increased number of probationers who toll their probation as of the effective date of probation. Currently, there is no safeguard in place to ensure that these probationers are not practicing, other than their notification to the Board. Therefore, the amendments proposed in Attachment A combine “Residing or Practicing Out of State” and “Failure to Practice – California Resident,” standard conditions, deleting unnecessary language, and specifying the cancellation of a registration or license which has been tolled for a total of two years regardless of their in-state or out-of-state residency.

**Recommended Language for Disciplinary Orders**

The “Board Policies and Guidelines” section of the current Disciplinary Guidelines (Revised March 2010) contains recommended language for applicants and registrants to be used in the first paragraph of disciplinary orders. Staff proposes adding language to address the granting of other registrations or licenses by the Board and the application of probation for those other registrations and licenses.

**Recommendation**

At its April 19, 2012 meeting, the Policy and Advocacy Committee recommended that the Board direct staff to make any decided-upon changes and any non-substantive changes to the proposed language, and to include the proposed amendments in the rulemaking package to amend the Disciplinary Guidelines that were approved on November 9, 2011.

**Attachments**

A. Proposed Language

B. Proposed Changes to Title 16, CCR §1888, and Disciplinary Guidelines (as approved by the Board at the November 9, 2011 meeting)
ATTACHMENT A
PROPOSED AMENDMENTS FOR DISCIPLINARY GUIDELINES

1. RECOMMENDED LANGUAGE FOR TOLLING OF PROBATION

21. Residing or Practicing Out-of-State

In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4980.02, 4989.14, 4996.9, or 4999.20 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in practice within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent’s license shall be automatically cancelled if respondent’s periods of temporary or permanent residence or practice outside California total two years. However, respondent’s license shall not be cancelled as long as respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

(OPTIONAL)
Any respondent disciplined under Business and Professions Code Sections 141(a), 4982.25, 4992.36, 4989.54(h), 4989.54(i), or 4990.38 (another state discipline) may petition for modification or termination of penalty: 1) if the other state’s discipline terms are modified, terminated or reduced; and 2) if at least one year has elapsed from the effective date of the California discipline.

22. Failure to Practice – California Resident

In the event respondent resides in the State of California and for any reason respondent stops practicing in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4980.02, 4989.14, 4996.9, or 4999.20 of the Business and Professions Code.
21. Failure to Practice

In the event respondent stops practicing in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4908.02, 4989.14, 4996.9, or 4999.20 of the Business and Professions Code. Any period of non-practice, as defined in this condition, will not apply to the reduction of the probationary term and will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; File Quarterly Reports; Comply With Probation Program; Maintain Valid License/Registration; and Cost Recovery. Respondent’s license/registration shall be automatically cancelled if respondent’s period of non-practice total two years.

2. RECOMMENDED LANGUAGE FOR DISCIPLINARY ORDERS

Recommended Language for Registration Applicants

IT IS HEREBY ORDERED THAT Respondent ___________ be issued a Registration as a ______________. Said Registration shall be revoked. The revocation will be stayed and Respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if Respondent is issued granted a subsequent registration, or becomes licensed, or is granted another registration or license regulated by the Board during the probationary period.

Recommended Language for Registrants

IT IS HEREBY ORDERED THAT___________ Registration Number ________ issued to Respondent ___________________ is revoked. The revocation will be stayed and respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if Respondent is issued granted a subsequent registration, or becomes licensed, or is granted another registration or license regulated by the Board during the probationary period.

Recommended Language for Licensees

IT IS HEREBY ORDERED THAT___________ License Number ________ issued to Respondent ___________________ is revoked. The revocation will be stayed and respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if respondent is granted another registration or license regulated by the Board.
§1888. DISCIPLINARY GUIDELINES

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Behavioral Sciences shall consider the disciplinary guidelines entitled “Board of Behavioral Sciences Disciplinary Guidelines” [Rev. March 2010 October 2011] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority cited: Sections 4980.60, 4987, and 4990.20, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 4982, 4986.70, 4992.3, and 4999.90, Business and Professions Code; and Sections 11400.20, and 11425.50(e), Government Code.
State of California

Department of Consumer Affairs

Board of Behavioral Sciences

DISCIPLINARY GUIDELINES

Revised: March 2010-October 2011
INTRODUCTION

The Board of Behavioral Sciences (hereinafter “the Board”) is a consumer protection agency with the primary mission of protecting consumers by establishing and maintaining standards for competent and ethical behavior by the professionals under its jurisdiction. In keeping with its mandate, the Board has adopted the following recommended guidelines for the intended use of those involved in the disciplinary process: Administrative Law Judges, respondents and attorneys involved in the discipline process, as well as Board members who review proposed decisions and stipulations and make final decisions.

These guidelines consist of two parts: an identification of the types of violations and range of penalties, for which discipline may be imposed (Penalty Guidelines); and model language for proposed terms and conditions of probation (Model Disciplinary Orders).

The Board expects the penalty imposed to be commensurate with the nature and seriousness of the violation.

These penalty guidelines apply only to the formal disciplinary process and do not apply to other alternatives available to the Board, such as citations and fines. See Business and Professions Code Section 125.9 and Title 16 California Code of Regulations Section 1886.
# TABLE OF CONTENTS

## PENALTY GUIDELINES

- Engaging in Sexual Contact with Client / Former Client ........................................... 5
- Sexual Misconduct ....................................................................................................... 5
- Engaging In Act with a Minor Punishable as a Sexually Related Crime Regardless of Whether the Act Occurred Prior to or After Registration or Licensure .......................... 5
- Commission of an Act Punishable as a Sexually Related Crime ................................. 5
- Impaired Ability to Function Safely Due to Mental illness, Physical Illness, Affecting Competency or Chemical Dependency ............................................................................ 6
- Chemical Dependency / Use of Drugs With Client While Performing Services ........... 6
- Intentionally / Recklessly Causing Physical or Emotional Harm to Client .................... 7
- Gross Negligence / Incompetence ............................................................................... 7
- General Unprofessional Conduct ................................................................................ 7
- Failure to Comply with Mandated Reporting Requirements ........................................ 7
- Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee / Registrant .................................................................................. 8
- Commission of Dishonest, Corrupt, or Fraudulent Act Substantially Related to Qualifications, Duties and Functions of License ................................................................. 8
- Performing, Representing Able to Perform, Offering to Perform, Permitting Trainee or Intern to Perform Beyond Scope of License / Competence ........................................ 8
- Discipline by Another State or Governmental Agency .................................................. 8
- Securing or Attempting to Secure a License by Fraud ................................................. 8
- Misrepresentation of License / Qualifications ................................................................ 8
- Violates Exam Security / Subversion of Licensing Exam ............................................. 8
- Impersonating Licensee / Allowing Impersonation ..................................................... 8
- Aiding and Abetting Unlicensed / Unregistered Activity ............................................. 8
- Failure to Maintain Confidentiality .............................................................................. 9
- Violations of the Chapter or Regulations by Licensees or Registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience ........................................... 9
- Pay, Accept, Solicit Fee for Referrals ......................................................................... 9
- Failure to Disclose Fees in Advance ........................................................................... 9
- False / Misleading / Deceptive / Improper Advertising .............................................. 9
- Failure to Keep Records Consistent with Sound Clinical Judgment ............................. 9
- Willful Failure to Comply Clients Access to Mental Health Records ......................... 9
- Failure to Comply with Section 2290.5 (Telemedicine) ............................................. 9

---

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engaging in Sexual Contact with Client / Former Client</td>
<td>5</td>
</tr>
<tr>
<td>Sexual Misconduct</td>
<td>5</td>
</tr>
<tr>
<td>Engaging In Act with a Minor Punishable as a Sexually Related Crime Regardless of Whether the Act Occurred Prior to or After Registration or Licensure</td>
<td>5</td>
</tr>
<tr>
<td>Commission of an Act Punishable as a Sexually Related Crime</td>
<td>5</td>
</tr>
<tr>
<td>Impaired Ability to Function Safely Due to Mental illness, Physical Illness, Affecting Competency or Chemical Dependency</td>
<td>6</td>
</tr>
<tr>
<td>Chemical Dependency / Use of Drugs With Client While Performing Services</td>
<td>6</td>
</tr>
<tr>
<td>Intentionally / Recklessly Causing Physical or Emotional Harm to Client</td>
<td>7</td>
</tr>
<tr>
<td>Gross Negligence / Incompetence</td>
<td>7</td>
</tr>
<tr>
<td>General Unprofessional Conduct</td>
<td>7</td>
</tr>
<tr>
<td>Failure to Comply with Mandated Reporting Requirements</td>
<td>7</td>
</tr>
<tr>
<td>Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee / Registrant</td>
<td>8</td>
</tr>
<tr>
<td>Commission of Dishonest, Corrupt, or Fraudulent Act Substantially Related to Qualifications, Duties and Functions of License</td>
<td>8</td>
</tr>
<tr>
<td>Performing, Representing Able to Perform, Offering to Perform, Permitting Trainee or Intern to Perform Beyond Scope of License / Competence</td>
<td>8</td>
</tr>
<tr>
<td>Discipline by Another State or Governmental Agency</td>
<td>8</td>
</tr>
<tr>
<td>Securing or Attempting to Secure a License by Fraud</td>
<td>8</td>
</tr>
<tr>
<td>Misrepresentation of License / Qualifications</td>
<td>8</td>
</tr>
<tr>
<td>Violates Exam Security / Subversion of Licensing Exam</td>
<td>8</td>
</tr>
<tr>
<td>Impersonating Licensee / Allowing Impersonation</td>
<td>8</td>
</tr>
<tr>
<td>Aiding and Abetting Unlicensed / Unregistered Activity</td>
<td>8</td>
</tr>
<tr>
<td>Failure to Maintain Confidentiality</td>
<td>8</td>
</tr>
<tr>
<td>Violations of the Chapter or Regulations by Licensees or Registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience</td>
<td>8</td>
</tr>
<tr>
<td>Pay, Accept, Solicit Fee for Referrals</td>
<td>8</td>
</tr>
<tr>
<td>Failure to Disclose Fees in Advance</td>
<td>8</td>
</tr>
<tr>
<td>False / Misleading / Deceptive / Improper Advertising</td>
<td>8</td>
</tr>
<tr>
<td>Failure to Keep Records Consistent with Sound Clinical Judgment</td>
<td>8</td>
</tr>
<tr>
<td>Willful Failure to Comply Clients Access to Mental Health Records</td>
<td>8</td>
</tr>
<tr>
<td>Failure to Comply with Section 2290.5 (Telemedicine)</td>
<td>8</td>
</tr>
</tbody>
</table>
Penalty Guidelines

The following is an attempt to provide information regarding violations of statutes and regulations under the jurisdiction of the Board of Behavioral Sciences and the appropriate range of penalties for each violation. Each penalty listed is followed in parenthesis by a number, which corresponds with a number under the chapter “Model Disciplinary Orders.” Examples are given for illustrative purposes, but no attempt is made to catalog all possible violations. Optional conditions listed are those the Board deems most appropriate for the particular violation; optional conditions not listed as potential minimum terms, should nonetheless be imposed where appropriate. The Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations which take into account unique circumstances.

If there are deviations or omissions from the guidelines in formulating a Proposed Decision, the Board requires that the Administrative Law Judge hearing the case include an explanation of the deviations or omissions, including all mitigating factors considered by the Administrative Law Judge in the Proposed Decision so that the circumstances can be better understood by the Board during its review and consideration of the Proposed Decision.
<table>
<thead>
<tr>
<th>Statutes and Regulations</th>
<th>Violation Category</th>
<th>Minimum Penalty</th>
<th>Maximum Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business and Professions Code: (B&amp;P)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Title 16, California Code of Regulations: (CCR)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Provisions: (GP)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penal Code: (PC)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Welfare and Institutions Code: (WI)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>MFT:</strong> B&amp;P § 4982.26(k)</td>
<td>Engaging in Sexual Contact with Client / Former Client</td>
<td>• Revocation / Denial of license or registration</td>
<td>• Revocation / Denial of license or registration</td>
</tr>
<tr>
<td>LCSW: B&amp;P § 4992.33</td>
<td></td>
<td>• Cost recovery.</td>
<td>• Cost recovery.</td>
</tr>
<tr>
<td>LEP: B&amp;P § 4989.58</td>
<td></td>
<td></td>
<td>The law requires revocation/denial of license or registration.</td>
</tr>
<tr>
<td>LPCC: B&amp;P § 4999.90(k)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GP: B&amp;P § 729</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>MFT:</strong> B&amp;P § 4982(aa)(1)</td>
<td>Engaging In Act with a Minor Punishable as a Sexually Related Crime Regardless of Whether the Act occurred prior to or after registration or licensure. or Engaging in act described in Section 261, 286, 288a, or 289 of the Penal code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the Board.</td>
<td>• Revocation / Denial of license or registration</td>
<td>• Revocation / Denial of license or registration</td>
</tr>
<tr>
<td>LCSW: B&amp;P § 4992.3(x)(1)</td>
<td></td>
<td>• Cost recovery.</td>
<td>• Cost recovery.</td>
</tr>
<tr>
<td>LEP: B&amp;P § 4989.54(y)(1)</td>
<td></td>
<td></td>
<td>The Board considers this reprehensible offense to warrant revocation/denial.</td>
</tr>
<tr>
<td>LPCC: B&amp;P § 4999.90(z)(1)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>MFT:</strong> B&amp;P § 4982(k), 4982.26</td>
<td>Sexual Misconduct (Anything other than as defined in B&amp;P Section 729)</td>
<td>• Revocation stayed</td>
<td>• Revocation / Denial of license or registration</td>
</tr>
<tr>
<td>LCSW: B&amp;P § 4992.3(a)(4), 4992.33</td>
<td></td>
<td>120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation</td>
<td>• Cost recovery.</td>
</tr>
<tr>
<td>CCR § 1881(f)</td>
<td></td>
<td></td>
<td>(See B&amp;P 4982.26, 4989.58, 4992.33)</td>
</tr>
<tr>
<td>LEP: B&amp;P § 4989.58</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>B&amp;P § 4989.54(n)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LPCC: B&amp;P § 4999.90(k)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GP: B&amp;P § 480, 726</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>MFT:</td>
<td>B&amp;P § 4982(k)</td>
<td></td>
<td></td>
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<tr>
<td>------</td>
<td>---------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LCSW:</td>
<td>B&amp;P § 4992.3(k)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LEP:</td>
<td>B&amp;P § 4989.54(n)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LPCC:</td>
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<tr>
<td>GP:</td>
<td>B&amp;P § 480</td>
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</tbody>
</table>

**Commission of an Act Punishable as a Sexually Related Crime**

- Psychotherapy
- Education
- Take and pass licensure examination
- Reimbursement of probation program
- And if warranted, enter and complete a rehabilitation program approved by the Board; abstain from controlled substances/use of alcohol, submit to biological fluid testing and samples; restricted practice, reimbursement of probation program costs.

**Revocation stayed**
- 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation
- Psychotherapy
- 5 years probation; standard terms and conditions
- Psychological/psychiatric evaluation as a condition precedent to the resumption of practice
- Supervised practice
- Education
- Cost recovery
- Reimbursement of probation program costs
- In addition:
  - Revocation / Denial of license or registration
  - Cost recovery.

<table>
<thead>
<tr>
<th>MFT:</th>
<th>B&amp;P § 4982(c), 4982.1</th>
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</thead>
<tbody>
<tr>
<td>LCSW:</td>
<td>B&amp;P § 4992.3(c), 4992.35</td>
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<tr>
<td>LEP:</td>
<td>B&amp;P § 4989.26, 4989.54(c)</td>
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<tr>
<td>LPCC:</td>
<td>B&amp;P § 4999.90(c)</td>
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<tr>
<td>GP:</td>
<td>B&amp;P § 480, 820</td>
</tr>
</tbody>
</table>

**Impaired Ability to Function Safely Due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency**

- Psychotherapy
- Education
- Take and pass licensure examination
- Reimbursement of probation program
- And if warranted, restricted practice.

**Revocation stayed**
- 60-90 days actual suspension and such additional time as may be necessary to obtain and review psychological or psychiatric evaluation and to implement any recommendations from that evaluation
- 5 years probation; standard terms and conditions
- Supervised practice
- Cost recovery
- Reimbursement of probation program costs.
- In addition:
  - Revocation / Denial of license or registration
  - Cost recovery.
<table>
<thead>
<tr>
<th>PHYSICAL ILLNESS:</th>
<th>• Physical evaluation; and if warranted: restricted practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHEMICAL DEPENDENCY</td>
<td>Psychological/psychiatric evaluation; therapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid tests and samples; and if warranted: restricted practice.</td>
</tr>
</tbody>
</table>

| MFT: | B&P § 4982(c), 4982.1 |
| LCSW: | B&P § 4992.3(c), 4992.35 |
| LEP: | B&P § 4989.54(c), 4989.56 |
| LPCC: | B&P § 4999.90(c) |
| GP: | B&P § 480 |

**Chemical Dependency / Use of Drugs With Client While Performing Services**

- • Revocation stayed
- • 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation
- • 5 years probation
- • Standard terms and conditions
- • Psychological/psychiatric evaluation
- • Supervised practice
- • Education
- • Supervised practice
- • Education
- • Rehabilitation program
- • Abstain from controlled substances
- • Submit to biological fluid test and samples
- • Cost recovery
- • Reimbursement of probation program costs

And if warranted, psychological/psychiatric evaluation; psychotherapy; restricted practice.

- • Revocation / Denial of license or registration
- • Cost recovery.

| MFT: | B&P § 4982(i) |
| LCSW: | B&P § 4992.3(i) |
| LEP: | B&P § 4989.54(m) |
| LPCC: | B&P § 4999.90(i) |
| GP: | B&P § 480 |

**Intentionally / Recklessly Causing Physical or Emotional Harm to Client**

- • Revocation stayed
- • 90-120 days actual suspension
- • 5 years probation
- • Standard terms and conditions
- • Supervised practice
- • Education
- • Take and pass licensure examinations
- • Cost recovery
- • Reimbursement of probation program costs

And if warranted, psychological/psychiatric evaluation; psychotherapy, restricted practice.

- • Revocation / Denial of license or registration application
- • Cost recovery
<table>
<thead>
<tr>
<th>Statutes and Regulations</th>
<th>Violation Category</th>
<th>Minimum Penalty</th>
<th>Maximum Penalty</th>
</tr>
</thead>
</table>
| Business and Professions Code: (B&P)  
Title 16, California Code of Regulations: (CCR)  
General Provisions: (GP)  
Penal Code: (PC)  
Welfare and Institutions Code: (WI) | | | |
| **MFT:**  
B&P § 4982(d)  
LCSW: B&P § 4992.3(d)  
LEP: B&P § 4989.54(k)  
LPCC: B&P § 4999.90(d)  
GP: B&P § 480 | Gross Negligence / Incompetence | • Revocation stayed  
• 60-90 days actual suspension; 5 years probation  
• Standard terms and conditions; supervised practice  
• Education  
• Take and pass licensure examinations  
• Cost recovery  
• Reimbursement of probation program costs;  
And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; restricted practice. | • Revocation / Denial of license or registration  
• Cost recovery. |
| **MFT:**  
B&P § 4982  
CCR § 1845  
LCSW: B&P § 4992.3  
CCR § 1881  
LEP: B&P § 4989.54  
CCR § 1858  
LPCC: B&P § 4999.90  
GP: B&P § 125.6, 480, 821 | General Unprofessional Conduct | • Revocation stayed  
• 60-90 days actual suspension  
• 3-5 years probation  
• Standard terms and conditions  
• Supervised practice  
• Education  
• Cost recovery; reimbursement of probation program  
And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid testing; restricted practice, law and ethics course. | • Revocation / Denial of license or registration  
• Cost recovery. |
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<thead>
<tr>
<th>Statutes and Regulations</th>
<th>Violation Category</th>
<th>Minimum Penalty</th>
<th>Maximum Penalty</th>
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</thead>
</table>
| Business and Professions Code: (B&P) | Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee / Registrant | • Revocation stayed  
• 60 days actual suspension  
• 5 years probation  
• Standard terms and conditions  
• Supervised practice  
• Education  
• Cost recovery  
• Reimbursement of probation program costs (Costs and conditions of probation depend on the nature of the criminal offense). | • Revocation / Denial of license or registration  
• Cost recovery. |
<p>| Title 16, California Code of Regulations: (CCR) | | | |
| General Provisions: (GP) | | | |
| Penal Code: (PC) | | | |
| Welfare and Institutions Code: (WI) | | | |
| MFT: B&amp;P § 4980.40(h), 4982(a) | | | |
| LCSW: B&amp;P § 4992.3(a), 4996.2(d), 4996.18(ab) | | | |
| LEP: B&amp;P § 4989.20(a)(3), 4989.54(a) | | | |
| LPCC: B&amp;P § 4999.90(a) | | | |
| GP: B&amp;P § 480, 490, 493 | | | |</p>
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<th>Violation Category</th>
<th>Minimum Penalty</th>
<th>Maximum Penalty</th>
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<tr>
<td>Business and Professions Code: (B&amp;P) Title 16, California Code of Regulations: (CCR) General Provisions: (GP) Penal Code: (PC) Welfare and Institutions Code: (WI)</td>
<td>Commission of Dishonest, Corrupt, or Fraudulent Act Substantially Related to Qualifications, Duties and Functions of License</td>
<td>• Revocation stayed  • 30-60 days actual suspension  • 3-5 years probation  • Standard terms and conditions  • Education  • Cost recovery  • Law and ethics course  • Reimbursement of probation program costs And if warranted, psychological/psychiatric evaluation; supervised practice; psychotherapy; take and pass licensure exams; restricted practice.</td>
<td>• Revocation / Denial of license or registration  • Cost recovery.</td>
</tr>
<tr>
<td>MFT: B&amp;P § 4982(j)  LCSW: B&amp;P § 4992.3(j,k)  CCR § 1881(e)  LEP: B&amp;P § 4989.54(g)  LPCC: B&amp;P § 4999.90(j)  GP: B&amp;P § 480, 650, 810</td>
<td>MFT: B&amp;P § 4980.02, 4982(l), 4982(s), 4982(t)  CCR § 1845(a), 1845(b)  LCSW: B&amp;P § 4992.3(m) 4996.9  CCR § 1881(g), 1881(h)  LEP: B&amp;P § 4989.14 4989.54(r)  CCR § 1858(b) 1858(m)  LPCC: B&amp;P § 4999.90(l), 4999.90(s) 4999.90(t)  GP: B&amp;P § 480</td>
<td>Performing, Representing Able to Perform, Offering to Perform, Permitting Trainee or Intern to Perform Beyond Scope of License / Competence</td>
<td>• Revocation stayed  • 30-60 days actual suspension  • 3-5 years probation  • Standard terms and conditions  • Education  • Cost recovery  • Reimbursement of probation program costs And if warranted, psychological/psychiatric evaluation; supervised practice; psychotherapy; take and pass licensure exams; restricted practice.</td>
</tr>
<tr>
<td>MFT: B&amp;P § 4982.25  LCSW: B&amp;P § 4992.36  LEP: B&amp;P § 4989.54(h), 4989.54(i)  LPCC: B&amp;P § 4990.38  GP: B&amp;P § 141, 480</td>
<td>Discipline by Another State or Governmental Agency</td>
<td>• Determine the appropriate penalty by comparing the violation under the other state with California law. And if warranted: take and pass licensure examinations as a condition precedent to practice; reimbursement of probation program costs.</td>
<td>• Revocation / Denial of license or registration  • Cost recovery.</td>
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<tr>
<td>Statutes and Regulations</td>
<td>Violation Category</td>
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<td>Statutes and Regulations</td>
<td>Securing or Attempting to Secure a License by Fraud</td>
<td>Revocation / Denial of license or registration application; Cost recovery.</td>
<td>Revocation / Denial of license or registration; Cost recovery.</td>
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<tr>
<td>Statutes and Regulations</td>
<td>Misrepresentation of License / Qualifications</td>
<td>Revocation stayed; 60 days actual suspension; 3-5 years probation; Standard terms and conditions; Education; Cost recovery; Reimbursement of probation program costs. And if warranted: take and pass licensure examinations.</td>
<td>Revocation / Denial of license or registration; Cost recovery.</td>
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<tr>
<td>Statutes and Regulations</td>
<td>Violates Exam Security / Subversion of Licensing Exam</td>
<td>Revocation stayed; 5 years probation; Standard terms and conditions; Education; Cost recovery; Reimbursement of probation program costs.</td>
<td>Revocation / Denial of license or registration; Cost recovery.</td>
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<tr>
<td>Statutes and Regulations</td>
<td>Impersonating Licensee / Allowing Impersonation</td>
<td>Revocation stayed; 60-90 days actual suspension; 5 years probation; Supervised practice; Standard terms and conditions; Psychological/psychiatric evaluation; Psychotherapy; Cost recovery; Reimbursement of probation costs.</td>
<td>Revocation / Denial of license or registration; Cost recovery.</td>
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<td>Statutes and Regulations</td>
<td>Violation Category</td>
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<td>Aiding and Abetting Unlicensed / Unregistered Activity</td>
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<td>Revocation / Denial of license or registration</td>
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<td><strong>LCSW:</strong> B&amp;P § 4992.3(h)</td>
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<td>30-90 days actual suspension</td>
<td>Cost recovery</td>
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<tr>
<td><strong>CCR § 1881(c)</strong></td>
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<td>3-5 years probation</td>
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<td><strong>LEP:</strong> B&amp;P § 4989.54 (t)</td>
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<td>Standard terms and conditions</td>
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<td><strong>LPCC:</strong> B&amp;P § 4999.90(h)</td>
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<td><strong>GP:</strong> B&amp;P § 125, 480</td>
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<td>Cost recovery</td>
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<td>Reimbursement of probation program costs</td>
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<td>And if warranted: supervised practice.</td>
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<td><strong>MFT:</strong> B&amp;P § 4982(m)</td>
<td>Failure to Maintain Confidentiality</td>
<td>Revocation stayed</td>
<td>Revocation / Denial of license or registration</td>
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<td><strong>LCSW:</strong> B&amp;P § 4992.3(m)</td>
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<td>Cost recovery</td>
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<tr>
<td><strong>CCR § 1881(i)</strong></td>
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<td>3-5 years probation</td>
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<td><strong>LEP:</strong> B&amp;P § 4989.54 (q)</td>
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<td>Standard terms and conditions</td>
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<td><strong>LPCC:</strong> B&amp;P § 4999.90(m)</td>
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<td>Education</td>
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<tr>
<td><strong>GP:</strong> B&amp;P § 480</td>
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<td>Take and pass licensure exams</td>
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<td>Cost recovery</td>
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<td>Reimbursement of probation program costs</td>
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<td><strong>MFT:</strong> B&amp;P § 728</td>
<td>Failure to Provide Sexual Misconduct Brochure</td>
<td>Revocation stayed</td>
<td>Revocation / Denial of license or registration</td>
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<td><strong>LCSW:</strong> B&amp;P § 728</td>
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<td>1-3 years probation</td>
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<td><strong>LPCC:</strong> B&amp;P § 728</td>
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<td>Standard terms and conditions</td>
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<td><strong>GP:</strong> B&amp;P § 480</td>
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<td>Education</td>
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<td>Cost recovery</td>
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<td>Reimbursement of probation program costs.</td>
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</tr>
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<td><strong>MFT:</strong> B&amp;P § 4982(r), 4982(t), 4982(u)</td>
<td>Improper Supervision of Trainee / Intern / Associate / Supervisee</td>
<td>Revocation stayed</td>
<td>Revocation / Denial of license or registration</td>
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<tr>
<td><strong>4982(f), 1833.1, 1845(b)</strong></td>
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<td>30-90 days actual suspension</td>
<td>Cost recovery</td>
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<td><strong>CCR § 1833.1, 1845(b)</strong></td>
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<td>2 years probation</td>
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<td><strong>LEP:</strong> B&amp;P § 4992.3(cs)</td>
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<td><strong>CCR § 4884(h)-1858(b)</strong></td>
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<td>Cost recovery</td>
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<td><strong>LPCC:</strong> B&amp;P § 4999.90(t), 4999.90(u)</td>
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<td>Reimbursement of probation program costs</td>
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<td></td>
<td>And if warranted: supervised practice.</td>
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<tr>
<td>Statutes and Regulations</td>
<td>Violation Category</td>
<td>Minimum Penalty</td>
<td>Maximum Penalty</td>
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<tr>
<td>Business and Professions Code: (B&amp;P)</td>
<td>Violations of the Chapter or Regulations by licensees or Registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience</td>
<td>• Revocation stayed</td>
<td>• Revocation / Denial of license or registration</td>
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<tr>
<td>Title 16, California Code of Regulations: (CCR)</td>
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<td>• Registration on probation until exams are passed and license issued</td>
<td>• Cost recovery</td>
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<tr>
<td>General Provisions: (GP)</td>
<td></td>
<td>• License issued on probation for one year</td>
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<tr>
<td>Penal Code: (PC)</td>
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<td>• Rejection of all illegally acquired hours</td>
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<td>Welfare and Institutions Code: (WI)</td>
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<td>• Standard terms and conditions</td>
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<td>MFT: B&amp;P § 4982(e), 4992(u)</td>
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<td>• Education</td>
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<td>• Cost recovery</td>
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<tr>
<td>LEP: B&amp;P § 4899.54(f)</td>
<td></td>
<td>• Reimbursement of probation program costs</td>
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<td>LPCC: B&amp;P § 4999.90(e)</td>
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<td>GP: B&amp;P § 480</td>
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<td>Violations of the Chapter or Regulations by licensees or Registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience</td>
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<td>• Reimbursement of probation program costs</td>
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<tr>
<td>MFT: B&amp;P § 4982(o)</td>
<td>Pay, Accept, Solicit Fee for Referrals</td>
<td>• Revocation stayed</td>
<td>• Revocation / Denial of license or registration</td>
</tr>
<tr>
<td>LCSW: B&amp;P § 4992.3(op) CCR § 1881(n)</td>
<td></td>
<td>• 3-5 years probation</td>
<td>• Cost recovery</td>
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<tr>
<td>LEP: B&amp;P § 4989.54(p)</td>
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<td>• Standard terms and conditions</td>
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<td>• Education</td>
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<td>GP: B&amp;P § 650</td>
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<td>• Cost recovery</td>
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<tr>
<td>Failure to Disclose Fees in Advance</td>
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<tr>
<td>MFT: B&amp;P § 4982(n)</td>
<td></td>
<td>• Law and Ethics course</td>
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<td>LCSW: B&amp;P § 4992.3(pq) CCR § 1881(j)</td>
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<tr>
<td>MFT: B&amp;P § 4980.46, 4982(p)</td>
<td>False / Misleading / Deceptive / Improper Advertising</td>
<td>• Revocation stayed</td>
<td>• Revocation stayed</td>
</tr>
<tr>
<td>LCSW: B&amp;P § 4992.3(pg) CCR § 1881(k)</td>
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<td>• 1 year probation</td>
<td>• 30-60 days actual suspension</td>
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<tr>
<td>LEP: B&amp;P § 4989.54(e)</td>
<td></td>
<td>• Standard terms and conditions</td>
<td>• 5 years probation</td>
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<td>LPCC: B&amp;P § 4999.90(p)</td>
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<td>• Education</td>
<td>• Standard terms and conditions</td>
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<tr>
<td>ALL: CCR § 1811</td>
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<td>• Cost recovery</td>
<td>• Education</td>
</tr>
<tr>
<td>GP: B&amp;P § 480, 651, 17500</td>
<td></td>
<td>• Reimbursement of probation program</td>
<td>• Cost recovery</td>
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<td>• Reimbursement of probation program costs</td>
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<td>Statutes and Regulations</td>
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<td>Title 16, California Code of Regulations: (CCR)</td>
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<td>General Provisions: (GP)</td>
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<td><strong>MFT:</strong> B&amp;P § 4982(v)</td>
<td>Failure to Keep Records Consistent with Sound Clinical Judgment</td>
<td>Revocation stayed</td>
<td>Revocation stayed</td>
</tr>
<tr>
<td><strong>LCSW:</strong> B&amp;P § 4992.3(st)</td>
<td></td>
<td>1 year probation</td>
<td>30 days actual suspension</td>
</tr>
<tr>
<td><strong>LEP:</strong> B&amp;P § 4989.54(i)(j)</td>
<td></td>
<td>Standard terms and conditions</td>
<td>1-3 years probation</td>
</tr>
<tr>
<td><strong>LPCC:</strong> B&amp;P § 4999.90(v)</td>
<td></td>
<td>Education</td>
<td>Standard terms and conditions</td>
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<td>Cost recovery</td>
<td>Education</td>
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<td>Reimbursement of probation program costs</td>
<td>Cost recovery</td>
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<td>Reimbursement of probation program costs</td>
</tr>
<tr>
<td><strong>MFT:</strong> B&amp;P § 4982(y)</td>
<td>Willful Violation Of Chapter 1 (Commencing With Section 123100) Of Part 1 Of Division 106 Of The Health And Safety Code</td>
<td>Revocation stayed</td>
<td>Revocation stayed</td>
</tr>
<tr>
<td><strong>LCSW:</strong> B&amp;P § 4992.3(vw)</td>
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<td>1 year probation</td>
<td>30 days actual suspension</td>
</tr>
<tr>
<td><strong>LEP:</strong> B&amp;P § 4989.54(x)</td>
<td></td>
<td>Standard terms and conditions</td>
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<td>Education</td>
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<td>Reimbursement of probation program costs</td>
</tr>
<tr>
<td><strong>MFT:</strong> B&amp;P § 4982(z)</td>
<td>Failure To Comply With Section 2290.5 (Telemedicine)</td>
<td>Revocation stayed</td>
<td>Revocation stayed</td>
</tr>
<tr>
<td><strong>LCSW:</strong> B&amp;P § 4992.3(wx)</td>
<td></td>
<td>1 year probation</td>
<td>30 days actual suspension</td>
</tr>
<tr>
<td><strong>LEP:</strong> B&amp;P § 4990.54(d)</td>
<td></td>
<td>Standard terms and conditions</td>
<td>1-3 years probation</td>
</tr>
<tr>
<td><strong>LPCC:</strong> B&amp;P § 4990.90(ac)</td>
<td></td>
<td>Education</td>
<td>Standard terms and conditions</td>
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<td>Cost recovery;</td>
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<td>Reimbursement of probation program costs</td>
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Model Disciplinary Orders

Model Disciplinary Orders are divided into two categories. The first category consists of Optional Terms and Conditions of Probation that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case. The second category consists of the Standard Terms and Conditions of Probation which must appear in all Proposed Decisions and proposed stipulated agreements.

To enhance the clarity of a Proposed Decision or Stipulation, the Board requests that all optional conditions (1-16) that are being imposed be listed first in sequence followed immediately by all of the standard terms and conditions, which include cost recovery (17-32).

Optional Terms and Conditions of Probation

Depending on the nature and circumstances of the case, the optional terms and conditions of probation that may appear are as follows:

1. Actual suspension
2. Psychological / Psychiatric evaluation
3. Psychotherapy
4. Supervised Practice
5. Education
6. Take and Pass licensure examinations
7. Rehabilitation Program
8. Abstain from Controlled Substances/Submit to Biological Fluid Testing and Samples
9. Abstain from Use of Alcohol / Submit to Biological Fluid Testing and Samples
10. Restricted Practice
11. Restitution
12. Reimbursement of Probation Program
13. Physical Evaluation
15. Monitor Billing System Audit
16. Law and Ethics Course

1. Actual Suspension

A. Commencing from the effective date of this decision, respondent shall be suspended from the practice of ________ for a period of ___ days.

OR

B. Commencing from the effective date of this decision, respondent shall be suspended from the practice of ________ for a period of _____ days, and such additional time as may be necessary to obtain and review psychological or psychiatric evaluation, to implement any recommendations from that evaluation, and to successfully complete the required licensure examinations as a condition precedent to resumption of practice as outlined in condition #____ (Take and pass licensure examinations).
2. **Psychological / Psychiatric Evaluation**

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall complete a psychological or psychiatric evaluation by such licensed psychologists or psychiatrists as are appointed by the Board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such evaluator shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a counselor and such other information as the Board may require. Respondent shall execute a Release of Information authorizing the evaluator to release all information to the Board. Respondent shall comply with the recommendations of the evaluator.

Note: If supervised practice is not part of the order, and the evaluator finds the need for supervised practice, then the following term shall be added to the disciplinary order. If a psychological or psychiatric evaluation indicates a need for supervised practice, (within 30 days of notification by the Board), respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor by which the respondent's practice will be supervised.

If respondent is determined to be unable to practice independently and safely, upon notification, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee. Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board or its designee has notified the respondent of its determination that respondent may resume practice.

*(FYI: The Board requires the appointment of evaluators who have appropriate knowledge, training, and experience in the area involved in the violation).*

3. **Psychotherapy**

Respondent shall participate in ongoing psychotherapy with a California licensed mental health professional who has been approved by the Board. Within 60 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval the name and qualifications of one or more therapists of respondent's choice. Such therapist shall possess a valid California license to practice and shall have had no prior business, professional, or personal relationship with respondent, and shall not be the respondent's supervisor. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy is to be borne by respondent.

Respondent may, after receiving the Board's written permission, receive therapy via videoconferencing if respondent's good faith attempts to secure face-to-face counseling are unsuccessful due to the unavailability of qualified mental health care professionals in the area. The Board may require that respondent provide written documentation of his or her good faith attempts to secure counseling via videoconferencing.

Respondent shall provide the therapist with a copy of the Board's decision no later than the first counseling session. Upon approval by the Board, respondent shall undergo and continue treatment until the Board or its designee determines that no further psychotherapy is necessary.
Respondent shall take all necessary steps to ensure that the treating psychotherapist submits quarterly written reports to the Board concerning respondent's fitness to practice, progress in treatment, and to provide such other information as may be required by the Board. Respondent shall execute a Release of Information authorizing the therapist to divulge information to the Board.

If the treating psychotherapist finds that respondent cannot practice safely or independently, the psychotherapist shall notify the Board within three (3) working days. Upon notification by the Board, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee that respondent may do so. Respondent shall not thereafter engage in any practice for which a license issued by the Board is required until the Board or its designee has notified respondent that he/she may resume practice. Respondent shall document compliance with this condition in the manner required by the Board.

**(FYI: The Board requires that therapists have appropriate knowledge, training and experience in the area involved in the violation).**

### 4. Supervised Practice

Within 30 days of the effective date of this decision, respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor. The supervisor shall be a current California licensed practitioner in respondent's field of practice, who shall submit written reports to the Board or its designee on a quarterly basis verifying that supervision has taken place as required and including an evaluation of respondent's performance. The supervisor shall be independent, with no prior business, professional or personal relationship with respondent.

If respondent is unable to secure a supervisor in his or her field of practice due to the unavailability of mental health care professionals in the area, then the Board may consider the following options for satisfying this probationary term:

1. Permitting the respondent to receive supervision via videoconferencing; or,
2. Permitting respondent to secure a supervisor not in the respondent's field of practice.

The foregoing options shall be considered and exhausted by the Board in the order listed above. The Board may require that respondent provide written documentation of his or her good faith attempts to secure face-to-face supervision, supervision via videoconferencing or to locate a mental health professional that is licensed in the respondent's field of practice.

Failure to file the required reports in a timely fashion shall be a violation of probation. Respondent shall give the supervisor access to respondent's fiscal and client records. Supervision obtained from a probation supervisor shall not be used as experience gained toward licensure.

If the supervisor is no longer available, respondent shall notify the Board within 15 days and shall not practice until a new supervisor has been approved by the Board. All costs of the supervision shall be borne by respondent. Supervision shall consist of at least one (1) hour per week in individual face to face meetings. The supervisor shall not be the respondent's therapist.

[Optional - Respondent shall not practice until he/she has received notification that the Board has approved respondent's supervisor.]
5. Education

Respondent shall take and successfully complete the equivalency of ____ semester units in each of the following areas ________. All course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, educational psychologist, or professional clinical counselor or through a course approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all course work must be completed within one year from the effective date of this Decision.

Within 90 days of the effective date of the decision respondent shall submit a plan for prior Board approval for meeting these educational requirements. All costs of the course work shall be paid by the respondent. Units obtained for an approved course shall not be used for continuing education units required for renewal of licensure.

(FYI: This term is appropriate when the violation is related to record keeping, which includes but is not limited to: recordkeeping, documentation, treatment planning, progress notes, security of records, billing, and reporting requirements.)

6. Take and Pass Licensure Examinations

Respondent shall take and pass the licensure exam(s) currently required of new applicants for the license possessed by respondent. Respondent shall not practice until such time as respondent has taken and passed these examinations. Respondent shall pay the established examination fees. If respondent has not taken and passed the examination within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation.

7. Rehabilitation Program

Within fifteen (15) days from the effective date of the decision, respondent shall submit to the Board or its designee for prior approval the name of one or more rehabilitation program(s). Respondent shall enter a rehabilitation and monitoring program within fifteen (15) days after notification of the board's approval of such program. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board or its designee. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall sign a release allowing the program to release to the Board all information the Board deems relevant. The respondent shall ensure that the Board receives quarterly written reports from the rehabilitation program addressing the respondent's progress in the program.

Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random biological fluid testing, abstention from drugs and alcohol, use of worksite monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. All costs of participating in the program(s) shall be borne by the respondent.

8. Abstain from Controlled Substances / Submit to Biological Fluid Testing and Samples

Respondent shall completely abstain from the use or possession of controlled or illegal substances unless lawfully prescribed by a medical practitioner for a bona fide illness.
Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. The length of time and frequency will be determined by the Board.

Respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to respondent's current employer and shall be a violation of probation.

9. Abstain from Use of Alcohol / Submit to Biological Fluid Testing and Samples

Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. The length of time and frequency will be determined by the Board. The respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the respondent's current employer and shall be a violation of probation.

10. Restricted Practice

Respondent's practice shall be limited to ____________. Within 30 days from the effective date of the decision, respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall notify their supervisor of the restrictions imposed on their practice.

11. Restitution

Within 90 days of the effective date of this decision, respondent shall provide proof to the Board or its designee of restitution in the amount of $_________ paid to ________.

12. Reimbursement of Probation Program

Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period. Reimbursement costs shall be $_________ per year/$______ per month.

13. Physical Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall complete a physical evaluation by such licensed physicians as are appointed by the Board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such physician shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a therapist and such other information
as the Board may require. Respondent shall execute a Release of Information authorizing the
physician to release all information to the Board. Respondent shall comply with the
recommendations of the physician.

If a physical evaluation indicates a need for medical treatment, within 30 days of notification by the
Board, respondent shall submit to the Board or its designee the name and qualifications of the
medical provider, and a treatment plan by the medical provider by which the respondent's physical
treatment will be provided.

If respondent is determined to be unable to practice independently and safely, upon notification,
respondent shall immediately cease practice and shall not resume practice until notified by the Board
or its designee. Respondent shall not engage in any practice for which a license issued by the Board
is required, until the Board or its designee has notified the respondent of its determination that
respondent may resume practice.


Within fifteen (15) days from the effective date of the decision, respondent shall submit to the Board
or its designee for prior approval the name of one or more independent billing systems which monitor
and document the dates and times of client visits. Respondent shall obtain the services of the
independent billing system monitoring program within fifteen (15) days after notification of the board's
approval of such program. Within 30 days of the effective date of this decision, respondent shall
obtain the services of an independent billing system to monitor and document the dates and times of
client visits. Clients are to sign documentation stating the dates and time of services rendered by
respondent and no bills are to be issued unless there is a corresponding document signed by the
client in support thereof. The billing system service shall submit quarterly written reports concerning
respondent's cooperation with this system. The cost of the service shall be borne by respondent.

15. Monitor Billing System Audit

Within 60 days of the effective date of this decision, respondent shall provide to the Board or its
designee the names and qualifications of three auditors. The Board or its designee shall select one
of the three auditors to annually audit respondent's billings for compliance with the Billing System
condition of probation. During said audit, randomly selected client billing records shall be reviewed
in accordance with accepted auditing/accounting standards and practices. The cost of the audits
shall be borne by respondent. Failure to pay for the audits in a timely fashion shall constitute a
violation of probation.

16. Law and Ethics Course

Respondent shall take and successfully complete the equivalency of two semester units in law and
ethics. Course work shall be taken at the graduate level at an accredited or approved educational
institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical
social worker, educational psychologist, professional clinical counselor as defined in Sections
4980.40, 4996.18, 4999.32 or 4999.33 of the Business and Professions Codes and Section 1854 of
Title 16 of the California Code of Regulations or through a course approved by the Board.
Classroom attendance must be specifically required. Within 90 days of the effective date of this
Decision, respondent shall submit a plan for prior Board approval for meeting this educational
requirement. Said course must be taken and completed within one year from the effective date of
this Decision. The costs associated with the law and ethics course shall be paid by the respondent.
Units obtained for an approved course in law and ethics shall not be used for continuing education.
units required for renewal of licensure.

(FYI: This term is appropriate when the licensee fails to keep informed about or comprehend the legal obligations and/or ethical responsibilities applicable to their actions. Examples include violations involving boundary issues, transference/countertransference, breach of confidentiality and reporting requirements.)

**Standard Terms and Conditions of Probation**

The sixteen standard terms and conditions generally appearing in every probation case are as follows:

47. **Obey All Laws**

48. **File Quarterly Reports**

49. **Comply with Probation Program**

20. **Interviews with the Board**

24. **Residing or Practicing Out-of-State**

22. **Failure to Practice- California Resident**

23. **Change of Place of Employment or Place of Residence**

24. **Supervision of Unlicensed Persons**

25. **Notification to Clients**

26. **Notification to Employer**

27. **Violation of Probation**

28. **Maintain Valid License**

29. **License Surrender**

30. **Instruction of Coursework Qualifying for Continuing Education**

31. **Reimbursement of Probation Program**

32. **Cost Recovery**

**Specific Language for Standard Terms and Conditions of Probation**

(To be included in all Decisions)

47. **Obey All Laws**

Respondent shall obey all federal, state and local laws, all statutes and regulations governing the licensee, and remain in full compliance with any court ordered criminal probation, payments and other orders. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within 30 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall pay the cost associated with the fingerprint process.

48. **File Quarterly Reports**

Respondent shall submit quarterly reports, to the Board or its designee, as scheduled on the “Quarterly Report Form” (rev. 01/12/01). Respondent shall state under penalty of perjury whether he/she has been in compliance with all the conditions of probation. Notwithstanding any provision
for tolling of requirements of probation, during the cessation of practice respondent shall continue to submit quarterly reports under penalty of perjury.

19. Comply with Probation Program

Respondent shall comply with the probation program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the program.

20. Interviews with the Board

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

21. Residing or Practicing Out-of-State

In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4980.02, 4989.14, 4996.9, or 4999.20 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in practice within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California total two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

(OPTIONAL)

Any respondent disciplined under Business and Professions Code Sections 141(a), 4982.25, 4992.36, 4989.54(h), 4989.54(i), or 4990.38 (another state discipline) may petition for modification or termination of penalty: 1) if the other state’s discipline terms are modified, terminated or reduced; and 2) if at least one year has elapsed from the effective date of the California discipline.

22. Failure to Practice- California Resident
In the event respondent resides in the State of California and for any reason respondent stops practicing in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4980.02, 4989.14, 4996.9, or 4999.20 of the Business and Professions Code.

23.22. Change of Place of Employment or Place of Residence

Respondent shall notify the Board or its designee in writing within 30 days of any change of place of employment or place of residence. The written notice shall include the address, the telephone number and the date of the change.

24.23. Supervision of Unlicensed Persons

While on probation, respondent shall not act as a supervisor for any hours of supervised practice required for any license issued by the Board. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this Decision.

25.24. Notification to Clients

Respondent shall notify all clients when any term or condition of probation will affect their therapy or the confidentiality of their records, including but not limited to supervised practice, suspension, or client population restriction. Such notification shall be signed by each client prior to continuing or commencing treatment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

(FYI: Respondents should seek guidance from Board staff regarding appropriate application of this condition).

26.25. Notification to Employer

Respondent shall provide each of his or her current or future employers, when performing services that fall within the scope of practice of his or her license, a copy of this Decision and the Statement of Issues or Accusation before commencing employment. Notification to the respondent’s current employer shall occur no later than the effective date of the Decision or immediately upon commencing employment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

27.26. Violation of Probation

If respondent violates the conditions of his/her probation, the Board, after giving respondent notice and the opportunity to be heard, may set aside the stay order and impose the discipline (revocation/suspension) of respondent's license [or registration] provided in the decision.
If during the period of probation, an accusation, petition to revoke probation, or statement of issues has been filed against respondent's license [or registration] or application for licensure, or the Attorney General's office has been requested to prepare such an accusation, petition to revoke probation, or statement of issues, the probation period set forth in this decision shall be automatically extended and shall not expire until the accusation, petition to revoke probation, or statement of issues has been acted upon by the board. Upon successful completion of probation, respondent's license [or registration] shall be fully restored.

28.27. Maintain Valid License

Respondent shall, at all times while on probation, maintain a current and active license with the Board, including any period during which suspension or probation is tolled. Should respondent's license, by operation of law or otherwise, expire, upon renewal respondent’s license shall be subject to any and all terms of this probation not previously satisfied.

29.28. License Surrender

Following the effective date of this decision, if respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily request the surrender of his/her license to the Board. The Board reserves the right to evaluate the respondent’s request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 30 calendar days deliver respondent’s license and certificate and if applicable wall certificate to the Board or its designee and respondent shall no longer engage in any practice for which a license is required. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of respondent’s license shall be considered to be a disciplinary action and shall become a part of respondent’s license history with the Board. Respondent may not petition the Board for reinstatement of the surrendered license. Should respondent at any time after voluntary surrender ever reapply to the Board for licensure respondent must meet all current requirements for licensure including, but not limited to, filing a current application, meeting all current educational and experience requirements, and taking and passing any and all examinations required of new applicants.

30.29. Instruction of Coursework Qualifying for Continuing Education

Respondent shall not be an instructor of any coursework for continuing education credit required by any license issued by the Board.

34.30. Notification to Referral Services

Respondent shall immediately send a copy of this decision to all referral services registered with the Board in which respondent is a participant. While on probation, respondent shall send a copy of this decision to all referral services registered with the Board that respondent seeks to join.
31. **Reimbursement of Probation Program**

Respondent shall reimburse the Board for the costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period. Reimbursement costs shall be $_________ per year.

32. **Cost Recovery**

Respondent shall pay the Board $__________ as and for the reasonable costs of the investigation and prosecution of Case No. ____________. Respondent shall make such payments as follows: [Outline payment schedule.] Respondent shall make the check or money order payable to the Board of Behavioral Sciences and shall indicate on the check or money order that it is the cost recovery payment for Case No. ____________. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full payment has been made. Should any part of cost recovery not be paid in accordance with the outlined payment schedule, respondent shall be considered to be in violation of probation. A period of non-practice by respondent shall not relieve respondent of his or her obligation to reimburse the board for its costs.

Cost recovery must be completed six months prior to the termination of probation. A payment plan authorized by the Board may be extended at the discretion of the Enforcement Manager based on good cause shown by the probationer.

**BOARD POLICIES AND GUIDELINES**

**Accusations**

The Board of Behavioral Sciences (Board) has the authority pursuant to Section 125.3 of the Business and Professions Code to recover costs of investigation and prosecution of its cases. The Board requests that this fact be included in the pleading and made part of the accusation.

**Statement of Issues**

The Board will file a Statement of Issues to deny an application of a candidate for the commission of an act, which if committed by a licensee would be cause for license discipline.

**Stipulated Settlements**

The Board will consider entering into stipulated settlements to promote cost effective consumer protection and to expedite disciplinary decisions. The respondent should be informed that in order to stipulate to settlement with the Board, he or she may be required to admit to the violations set forth in the Accusation. The Deputy Attorney General must accompany all proposed stipulations submitted with a memo addressed to Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions, and proposed penalty along with a recommendation.
Recommended Language for License Surrenders

"Admission(s) made in the stipulation are made solely for the purpose of resolving the charges in the pending accusation, and may not be used in any other legal proceedings, actions or forms, except as provided in the stipulation.

The admissions made in this stipulation shall have no legal effect in whole or in part if the Board does not adopt the stipulation as its decision and order.

Contingency

This stipulation shall be subject to approval by the Board of Behavioral Sciences. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Behavioral Sciences may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his/her counsel. By signing the stipulation, Respondent understands and agrees that he/she may not withdraw his/her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

Respondent fully understands that when the Board adopts the license surrender of respondent's license, respondent will no longer be permitted to practice as a _____ in California. Respondent further understands that the license surrender of his or her license, upon adoption, shall be considered to be a disciplinary action and shall become a part of respondent's license history with the Board.

The respondent further agrees that with the adoption by the Board of his or her license surrender, respondent may not petition the Board for reinstatement of the surrendered license.

Respondent may reapply to the Board for licensure three years from the date of surrender and must meet all current requirements for licensure including, but not limited to, filing a current application, meeting all current educational and experience requirements, and taking and passing any and all examinations required of new applicants.

Respondent understands that should he or she ever reapply for licensure as a _____ or should he or she ever apply for any other registration or licensure issued by the Board, or by the Board of Psychology, all of the charges contained in Accusation No._____ shall be deemed admitted for the purpose of any Statement of Issues or other proceeding seeking to deny such application or reapplication."

Recommended Language for Registration Applicants

IT IS HEREBY ORDERED THAT Respondent ___________ be issued a Registration as a ___________. Said Registration shall be revoked. The revocation will be stayed and Respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if Respondent is issued a subsequent registration or becomes licensed during the probationary period.

Recommended Language for Registrants
IT IS HEREBY ORDERED THAT Registration Number ________ issued to Respondent ________________ is revoked. The revocation will be stayed and respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if Respondent is issued a subsequent registration or becomes licensed during the probationary period.

Proposed Decisions

The Board requests that proposed decisions include the following if applicable:

A. Names and addresses of all parties to the action.
B. Specific Code section violated with the definition of the code in the Determination of Issues.
C. Clear description of the acts or omissions that constitute a violation.
D. Respondent's explanation of the violation in the Findings of fact if he or she is present at the hearing.
E. Explanation for deviation from the Board's Disciplinary Guidelines.

When a probation order is imposed, the Board requests that the Order first list the Optional Terms and Conditions (1-16) followed by the Standard Terms and Conditions (17–22) as they may pertain to the particular case. If the respondent fails to appear for his or her scheduled hearing or does not submit a notice of defense, such inaction shall result in a default decision to revoke licensure or deny application.

Reinstatement / Reduction of Penalty Hearings

The primary concerns of the Board at reinstatement or penalty relief hearings are (1) the Rehabilitation Criteria for Suspensions or Revocations identified in Title 16, California Code of Regulations Section 1814, and (2) the evidence presented by the petitioner of his or her rehabilitation. The Board is not interested in retrying the original revocation or probation case. The Board shall consider, pursuant to Section 1814, the following criteria of rehabilitation:

(1) Nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.
(2) Evidence of any acts committed subsequent to the acts or crimes under consideration as grounds for suspension or revocation under Section 490 of the Code.
(3) The time that has elapsed since commission of the acts or crimes giving rise to the suspension or revocation.
(4) Whether the licensee has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against such person.
(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
(6) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent, or immaterial.
(7) Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.
Evidence, if any, of rehabilitation submitted by the licensee.

In the Petition Decision the Board requires a summary of the offense and the specific codes violated which resulted in the revocation, surrender, or probation of the license.

In petitioning for Reinstatement or Reduction of Penalty under Business and Professions Code Section 4982.2, the petitioner has the burden of demonstrating that he or she has the necessary and current qualifications and skills to safely engage in the practice of marriage and family therapy, clinical social work, educational psychology, or professional clinical counselor within the scope of current law, and accepted standards of practice. In reaching its determination, the Board considers various factors including the following:

A. The original violations for which action was taken against the petitioner's license;
B. Prior disciplinary and criminal actions taken against the petitioner by the Board, any State, local, or Federal agency or court;
C. The petitioner's attitude toward his or her commission of the original violations and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts;
D. The petitioner's documented rehabilitative efforts;
E. Assessment of the petitioner's rehabilitative and corrective efforts;
F. In addition, the Board may consider other appropriate and relevant matters not reflected above.

If the Board should deny a request for reinstatement of a revoked license or reduction of penalty (modification or termination of probation), the Board requests the Administrative Law Judge provide technical assistance in the formulation of language clearly setting forth the reasons for denial.

If a petitioner fails to appear for his or her scheduled reinstatement or penalty relief hearing, such proceeding shall go forth without the petitioner's presence and the Board will issue a decision based on the written evidence and oral presentations submitted.
To: Committee Members                                      Date:        April 26, 2012

From: Kim Madsen                                          Telephone: (916) 574-7841
       Executive Officer

Subject: Complaints Against Licensees who Provide Confidential Child Custody Evaluations to the Courts

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**Background**

For many years Board licensees have assisted California Family Courts in resolving issues or concerns related to matters of child custody. In this role a Board licensee may serve as a child custody recommending counselor (formerly known as mediators), as a court connected child custody evaluator or as a private child custody evaluator. Each role has specific qualifications and requirements established through the Rules of the Court and the California Family Code.

**Child Custody Recommending Counselor**

A child custody recommending counselor may be a member of the professional staff of the family court, probation department, or mental health services agency or any other person or agency designated by the court. (Family Code Section 3164) The child custody recommending counselor is not required to possess a license with the Board. However, they must meet specific educational and training requirements set forth in Family Code Section 1815.

The role of the child custody recommending counselor is to assist parents in resolving their differences and to develop a plan agreeable to both parties. In situations in which the parties cannot agree, the child custody recommending counselor prepares a recommendation. Family Code Section 3183 permits the child custody recommending counselor to submit either the plan or the recommendation to the court. The time appropriated for this service is not extensive and does not require an in depth assessment of the situation.

**Court Connected or Private Child Custody Evaluator**

A court connected child custody evaluator or a private child custody evaluator has a more extensive role and must be licensed as a Marriage and Family Therapist, Clinical Social Worker, Psychologist, or a Physician that is either a Board certified Psychiatrist or has completed a residency in psychiatry [Family Code Section 3110.5(c)(1)(2)(3)(4)]. The evaluator has the task of conducting a comprehensive assessment (commonly referred to as an evaluation) to determine the best interest of the child in disputed custody or visitation rights.
Conducting an evaluation requires a significant amount of time. The Rules of the Court (Rule 5.220) specify the content each evaluation must include as well as a description of the work completed by the evaluator. Upon the conclusion of the evaluator’s work, the evaluator prepares a written report that is submitted to the court. The court will base their decision regarding custody and visitation on this report.

Pursuant to Family Code Section 3025.5, the report submitted by the evaluator is considered confidential. The report may only be disclosed to the following persons:

- A party to the proceeding and his or her attorney
- A federal or state law enforcement officer, judicial officer, court employee, or family court facilitator for the county in which the action was filed, or an employee or agent of that facilitator
- Counsel appointed for the child pursuant to Family Code Section 3150
- Any other person upon order of the court for good cause

An individual releasing this report may be subject to sanctions by the Court [Family Code section 3111(d)].

Family Code section 3110.5(e) states a child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that license.

The court advises individuals that if they have a complaint against a mediator or evaluator, to file a complaint with the court. Each court has its own procedures for filing a complaint. Further, the individual may express their complaint to the judge at the time of their hearing.

The individuals are also advised that if their complaint is about ethical conduct or licensing issues, they may contact the appropriate state licensing board. The Board of Behavioral Sciences is one of the state licensing boards listed.

**BBS Role and Impact**

The Board receives numerous complaints against licensees who provide evaluations or recommendations to the courts. The Board does not investigate complaints that involve a mediator, due to their limited role. The Board will investigate complaints involving evaluators.

In all complaints, the source of the complaint alleges the licensee’s conduct/recommendation is unprofessional or is unethical. As in all complaint investigations, the Board must obtain the relevant information to determine if a violation of the Board’s statutes and regulations has occurred.

Since the nature of the complaint directly references the evaluator’s report to the court, to fully investigate the allegations, the report is a critical piece of information. Often the Board will receive this report from the source of the complaint. In cases where the Board has received this report, the Board has proceeded with an investigation. These investigations are time intensive and involve the use of a Subject Matter Expert and at times, assistance from the Division of Investigation.

Board staff observes significant challenges associated with these cases. The inability to obtain all of the relevant documentation requires the Board to close an investigation. This outcome increases the individual’s frustration not only with the courts, but also the Board.

Moreover, the Board has learned that its investigation of these cases is a concern for the courts in that licensees were alarmed that their reports may be subject to a Board investigation. Many licensees expressed an unwillingness to continue their role as an evaluator. Consequently, the courts became concerned about decreasing resources to perform this service.
Discussions with the Administrative Office of the Courts

In the summer of 2011, Board staff initiated discussions with the Administrative Office of the Courts (AOC) to exchange information each entity’s process, and to explore possible solutions to resolve the current issues. During the initial meeting, the Board was informed that current law did not allow the Board access to the evaluator’s report. The AOC explained that the report is confidential and could only be released to the Board by the court. To obtain the report, the Board is required to file a petition or subpoena with the court.

At subsequent meetings, the Board was provided with contact information for each court to provide to individuals who had a complaint about an evaluator and their report.

Case Discussion

In one particular case, the Board received three complaints involving a licensee who served as a private child custody evaluator. In each complaint, the parent alleged the licensee engaged in unprofessional conduct and ethical violations. In all three complaints the Board received sufficient documentation to investigate the allegations, including the confidential evaluation report. This report was provided to the Board or its investigator by the parent as well as the licensee.

The Board’s investigation revealed potential violations of the Board’s statues and regulations. The investigation was forwarded to a Subject Matter Expert for review and opinion. The Subject Matter Expert opined that the licensee provided inaccurate and incomplete information to the court.

The Board referred the case to the Attorney General for disciplinary action. The Deputy Attorney General assigned to the case determined it was in the Board’s best interest to seek formal release of this document from the court to the Board. Therefore, a motion was filed in Superior Court seeking the release of this document to the Board for the upcoming administrative hearing. The judge denied the Board’s request.

As a result, the document that served as the basis for the Board’s action against the licensee would be inadmissible in the upcoming administrative hearing. Thus, the Board had no other alternative than to withdraw its action against the licensee.

Discussion with the AOC Regarding Future Board Investigations

The Board met with the AOC to discuss this case and the inability to fully investigate allegations of licensee misconduct if the Board cannot obtain the relevant documentation to use in an administrative hearing. Both the Board and the AOC agree that it is essential that the courts receive accurate information from the child custody evaluator in order to determine the best interest of the child. Further, the AOC and the Board agree that a solution to this issue requires a legislative proposal to revise existing law.

April 19, 2012 Policy and Advocacy Committee Meeting

At its April 19, 2012 meeting the committee conducted an open discussion regarding the Board’s role in the investigation of complaints involving child custody evaluators. A question was raised regarding the Board’s jurisdiction in these matters. A previous opinion from a former Deputy Attorney General stated that the Board does not have jurisdiction based upon the fact that the setting nor the services provided are clinical or psychotherapeutic for which a license is required. The committee considered this comment.
Policy and Advocacy Committee Recommendation

The committee recommended that staff draft a legislative proposal that allows the Board access to the confidential report for investigative purposes and if necessary, the jurisdiction to conduct the investigations.

Recommendation

Conduct an open discussion regarding the Board’s role in the investigation of complaints involving child custody evaluators. If the Board determines the Board should continue to investigate these complaints, direct staff to seek clarification of Family Code section 3110.5 (e) regarding the jurisdiction of Board licensees who provide evaluation services to the court. If it is determined the Board has jurisdiction, direct staff to draft a legislative proposal that allows the Board access to the confidential report for investigative purposes.

Attachments

Family Code section 3160-3165
Family Code section 1810-1820
Family Code section 3175-3188
Family Code section 3110-3118
Family Code section 3020-3032
3160. Each superior court shall make a mediator available. The court is not required to institute a family conciliation court in order to provide mediation services.

3161. The purposes of a mediation proceeding are as follows:
   (a) To reduce acrimony that may exist between the parties.
   (b) To develop an agreement assuring the child close and continuing contact with both parents that is in the best interest of the child, consistent with Sections 3011 and 3020.
   (c) To effect a settlement of the issue of visitation rights of all parties that is in the best interest of the child.

3162. (a) Mediation of cases involving custody and visitation concerning children shall be governed by uniform standards of practice adopted by the Judicial Council.
   (b) The standards of practice shall include, but not be limited to, all of the following:
      (1) Provision for the best interest of the child and the safeguarding of the rights of the child to frequent and continuing contact with both parents, consistent with Sections 3011 and 3020.
      (2) Facilitation of the transition of the family by detailing factors to be considered in decisions concerning the child's future.
      (3) The conducting of negotiations in such a way as to equalize power relationships between the parties.
   (c) In adopting the standards of practice, the Judicial Council shall consider standards developed by recognized associations of mediators and attorneys and other relevant standards governing mediation of proceedings for the dissolution of marriage.
   (d) The Judicial Council shall offer training with respect to the standards to mediators.

3163. Courts shall develop local rules to respond to requests for a change of mediators or to general problems relating to mediation.

3164. (a) The mediator may be a member of the professional staff of a family conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court.
   (b) The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 1815.

3165. Any person, regardless of administrative title, hired on or after January 1, 1998, who is responsible for clinical supervision of
evaluators, investigators, or mediators or who directly supervises or administers the **Family** Court Services evaluation or mediation programs shall meet the same continuing education requirements specified in Section 1816 for supervising and associate counselors of conciliation.
1810. Each superior court shall exercise the jurisdiction conferred by this part. While sitting in the exercise of this jurisdiction, the court shall be known and referred to as the "family conciliation court."

1811. The presiding judge of the superior court shall annually, in the month of January, designate at least one judge to hear all cases under this part.

1812. (a) The judge of the family conciliation court may transfer any case before the family conciliation court pursuant to this part to the department of the presiding judge of the superior court for assignment for trial or other proceedings by another judge of the court, whenever in the opinion of the judge of the family conciliation court the transfer is necessary to expedite the business of the family conciliation court or to ensure the prompt consideration of the case.
   (b) When a case is transferred pursuant to subdivision (a), the judge to whom it is transferred shall act as the judge of the family conciliation court in the matter.

1813. (a) The presiding judge of the superior court may appoint a judge of the superior court other than the judge of the family conciliation court to act as judge of the family conciliation court during any period when the judge of the family conciliation court is on vacation, absent, or for any reason unable to perform the duties as judge of the family conciliation court.
   (b) The judge appointed under subdivision (a) has all of the powers and authority of a judge of the family conciliation court in cases under this part.

1814. (a) In each county in which a family conciliation court is established, the superior court may appoint one supervising counselor of conciliation and one secretary to assist the family conciliation court in disposing of its business and carrying out its functions. In counties which have by contract established joint family conciliation court services, the superior courts in contracting counties jointly may make the appointments under this subdivision.
   (b) The supervising counselor of conciliation has the power to do all of the following:
      (1) Hold conciliation conferences with parties to, and hearings in, proceedings under this part, and make recommendations concerning the proceedings to the judge of the family conciliation court.
      (2) Provide supervision in connection with the exercise of the counselor's jurisdiction as the judge of the family conciliation court may direct.
      (3) Cause reports to be made, statistics to be compiled, and
records to be kept as the judge of the family conciliation court may direct.

(4) Hold hearings in all family conciliation court cases as may be required by the judge of the family conciliation court, and make investigations as may be required by the court to carry out the intent of this part.

(5) Make recommendations relating to marriages where one or both parties are underage.

(6) Make investigations, reports, and recommendations as provided in Section 281 of the Welfare and Institutions Code under the authority provided the probation officer in that code.

(7) Act as domestic relations cases investigator.

(8) Conduct mediation of child custody and visitation disputes.

(c) The superior court, or contracting superior courts, may also appoint, with the consent of the board of supervisors, associate counselors of conciliation and other office assistants as may be necessary to assist the family conciliation court in disposing of its business. The associate counselors shall carry out their duties under the supervision of the supervising counselor of conciliation and have the powers of the supervising counselor of conciliation. Office assistants shall work under the supervision and direction of the supervising counselor of conciliation.

(d) The classification and salaries of persons appointed under this section shall be determined by:

(1) The board of supervisors of the county in which a noncontracting family conciliation court operates.

(2) The board of supervisors of the county which by contract has the responsibility to administer funds of the joint family conciliation court service.

1815. (a) A person employed as a supervising counselor of conciliation or as an associate counselor of conciliation shall have all of the following minimum qualifications:

(1) A master's degree in psychology, social work, marriage, family and child counseling, or other behavioral science substantially related to marriage and family interpersonal relationships.

(2) At least two years of experience in counseling or psychotherapy, or both, preferably in a setting related to the areas of responsibility of the family conciliation court and with the ethnic population to be served.

(3) Knowledge of the court system of California and the procedures used in family law cases.

(4) Knowledge of other resources in the community that clients can be referred to for assistance.

(5) Knowledge of adult psychopathology and the psychology of families.

(6) Knowledge of child development, child abuse, clinical issues relating to children, the effects of divorce on children, the effects of domestic violence on children, and child custody research sufficient to enable a counselor to assess the mental health needs of children.

(7) Training in domestic violence issues as described in Section 1816.

(b) The family conciliation court may substitute additional experience for a portion of the education, or additional education for a portion of the experience, required under subdivision (a).

(c) This section does not apply to any supervising counselor of conciliation who was in office on March 27, 1980.
1816. (a) For purposes of this section, the following definitions apply:

(1) "Eligible provider" means the Administrative Office of the Courts or an educational institution, professional association, professional continuing education group, a group connected to the courts, or a public or private group that has been authorized by the Administrative Office of the Courts to provide domestic violence training.

(2) "Evaluator" means a supervising or associate counselor described in Section 1815, a mediator described in Section 3164, a court-connected or private child custody evaluator described in Section 3110.5, or a court-appointed investigator or evaluator as described in Section 3110 or Section 730 of the Evidence Code.

(b) An evaluator shall participate in a program of continuing instruction in domestic violence, including child abuse, as may be arranged and provided to that evaluator. This training may utilize domestic violence training programs conducted by nonprofit community organizations with an expertise in domestic violence issues.

(c) Areas of basic instruction shall include, but are not limited to, the following:

(1) The effects of domestic violence on children.
(2) The nature and extent of domestic violence.
(3) The social and family dynamics of domestic violence.
(4) Techniques for identifying and assisting families affected by domestic violence.
(5) Interviewing, documentation of, and appropriate recommendations for families affected by domestic violence.
(6) The legal rights of, and remedies available to, victims.
(7) Availability of community and legal domestic violence resources.

(d) An evaluator shall also complete 16 hours of advanced training within a 12-month period. Four hours of that advanced training shall include community resource networking intended to acquaint the evaluator with domestic violence resources in the geographical communities where the family being evaluated may reside. Twelve hours of instruction, as approved by the Administrative Office of the Courts, shall include all of the following:

(1) The appropriate structuring of the child custody evaluation process, including, but not limited to, all of the following:
   (A) Maximizing safety for clients, evaluators, and court personnel.
   (B) Maintaining objectivity.
   (C) Providing and gathering balanced information from the parties and controlling for bias.
   (D) Providing separate sessions at separate times as described in Section 3113.
   (E) Considering the impact of the evaluation report and recommendations with particular attention to the dynamics of domestic violence.
(2) The relevant sections of local, state, and federal laws, rules, or regulations.
(3) The range, availability, and applicability of domestic violence resources available to victims, including, but not limited to, all of the following:
   (A) Shelters for battered women.
   (B) Counseling, including drug and alcohol counseling.
(C) Legal assistance.
(D) Job training.
(E) Parenting classes.
(F) Resources for a victim who is an immigrant.
(4) The range, availability, and applicability of domestic violence intervention available to perpetrators, including, but not limited to, all of the following:
   (A) Certified treatment programs described in Section 1203.097 of the Penal Code.
   (B) Drug and alcohol counseling.
   (C) Legal assistance.
   (D) Job training.
   (E) Parenting classes.
(5) The unique issues in a family and psychological assessment in a domestic violence case, including all of the following:
   (A) The effects of exposure to domestic violence and psychological trauma on children, the relationship between child physical abuse, child sexual abuse, and domestic violence, the differential family dynamics related to parent-child attachments in families with domestic violence, intergenerational transmission of familial violence, and manifestations of post-traumatic stress disorders in children.
   (B) The nature and extent of domestic violence, and the relationship of gender, class, race, culture, and sexual orientation to domestic violence.
   (C) Current legal, psychosocial, public policy, and mental health research related to the dynamics of family violence, the impact of victimization, the psychology of perpetration, and the dynamics of power and control in battering relationships.
   (D) The assessment of family history based on the type, severity, and frequency of violence.
   (E) The impact on parenting abilities of being a victim or perpetrator of domestic violence.
   (F) The uses and limitations of psychological testing and psychiatric diagnosis in assessing parenting abilities in domestic violence cases.
   (G) The influence of alcohol and drug use and abuse on the incidence of domestic violence.
   (H) Understanding the dynamics of high conflict relationships and relationships between an abuser and victim.
   (I) The importance of and procedures for obtaining collateral information from a probation department, children's protective services, police incident report, a pleading regarding a restraining order, medical records, a school, and other relevant sources.
   (J) Accepted methods for structuring safe and enforceable child custody and parenting plans that ensure the health, safety, welfare, and best interest of the child, and safeguards for the parties.
   (K) The importance of discouraging participants in child custody matters from blaming victims of domestic violence for the violence and from minimizing allegations of domestic violence, child abuse, or abuse against a family member.
(e) After an evaluator has completed the advanced training described in subdivision (d), that evaluator shall complete four hours of updated training annually that shall include, but is not limited to, all of the following:
   (1) Changes in local court practices, case law, and state and federal legislation related to domestic violence.
   (2) An update of current social science research and theory, including the impact of exposure to domestic violence on children.
   (f) Training described in this section shall be acquired from an
eligible provider and that eligible provider shall comply with all of the following:
(1) Ensure that a training instructor or consultant delivering the education and training programs either meets the training requirements of this section or is an expert in the subject matter.
(2) Monitor and evaluate the quality of courses, curricula, training, instructors, and consultants.
(3) Emphasize the importance of focusing child custody evaluations on the health, safety, welfare, and best interest of the child.
(4) Develop a procedure to verify that an evaluator completes the education and training program.
(5) Distribute a certificate of completion to each evaluator who has completed the training. That certificate shall document the number of hours of training offered, the number of hours the evaluator completed, the dates of the training, and the name of the training provider.
(g) (1) If there is a local court rule regarding the procedure to notify the court that an evaluator has completed training as described in this section, the evaluator shall comply with that local court rule.
(2) Except as provided in paragraph (1), an evaluator shall attach copies of his or her certificates of completion of the training described in subdivision (d) and the most recent updated training described in subdivision (e).
(h) An evaluator may satisfy the requirement for 12 hours of instruction described in subdivision (d) by training from an eligible provider that was obtained on or after January 1, 1996. The advanced training of that evaluator shall not be complete until that evaluator completes the four hours of community resource networking described in subdivision (d).
(i) The Judicial Council shall develop standards for the training programs. The Judicial Council shall solicit the assistance of community organizations concerned with domestic violence and child abuse and shall seek to develop training programs that will maximize coordination between conciliation courts and local agencies concerned with domestic violence.

1817. The probation officer in every county shall do all of the following:
(a) Give assistance to the family conciliation court that the court may request to carry out the purposes of this part, and to that end shall, upon request, make investigations and reports as requested.
(b) In cases pursuant to this part, exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

1818. (a) All superior court hearings or conferences in proceedings under this part shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. The court shall not allow ex parte communications, except as authorized by Section 216. All communications, verbal or written, from parties to the judge, commissioner, or counselor in a proceeding under this part shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.
(b) The files of the family conciliation court shall be closed. The petition, supporting affidavit, conciliation agreement, and any court order made in the matter may be opened to inspection by a party or the party's counsel upon the written authority of the judge of the family conciliation court.

1819. (a) Except as provided in subdivision (b), upon order of the judge of the family conciliation court, the supervising counselor of conciliation may destroy any record, paper, or document filed or kept in the office of the supervising counselor of conciliation which is more than two years old.

(b) Records described in subdivision (a) of child custody or visitation mediation may be destroyed when the minor or minors involved are 18 years of age.

(c) In the judge's discretion, the judge of the family conciliation court may order the microfilming of any record, paper, or document described in subdivision (a) or (b).

1820. (a) A county may contract with any other county or counties to provide joint family conciliation court services.

(b) An agreement between two or more counties for the operation of a joint family conciliation court service may provide that the treasurer of one participating county shall be the custodian of moneys made available for the purposes of the joint services, and that the treasurer may make payments from the moneys upon audit of the appropriate auditing officer or body of the county of that treasurer.

(c) An agreement between two or more counties for the operation of a joint family conciliation court service may also provide:

(1) For the joint provision or operation of services and facilities or for the provision or operation of services and facilities by one participating county under contract for the other participating counties.

(2) For appointments of members of the staff of the family conciliation court including the supervising counselor.

(3) That, for specified purposes, the members of the staff of the family conciliation court including the supervising counselor, but excluding the judges of the family conciliation court and other court personnel, shall be considered to be employees of one participating county.

(4) For other matters that are necessary or proper to effectuate the purposes of the Family Conciliation Court Law.

(d) The provisions of this part relating to family conciliation court services provided by a single county shall be equally applicable to counties which contract, pursuant to this section, to provide joint family conciliation court services.
3175. If a matter is set for mediation pursuant to this chapter, the mediation shall be set before or concurrent with the setting of the matter for hearing.

3176. (a) Notice of mediation and of any hearing to be held pursuant to this chapter shall be given to the following persons:
   (1) Where mediation is required to settle a contested issue of custody or visitation, to each party and to each party's counsel of record.
   (2) Where a stepparent or grandparent seeks visitation rights, to the stepparent or grandparent seeking visitation rights, to each parent of the child, and to each parent's counsel of record.
   (b) Notice shall be given by certified mail, return receipt requested, postage prepaid, to the last known address.
   (c) Notice of mediation pursuant to Section 3188 shall state that all communications involving the mediator shall be kept confidential between the mediator and the disputing parties.

3177. Mediation proceedings pursuant to this chapter shall be held in private and shall be confidential. All communications, verbal or written, from the parties to the mediator made in the proceeding are official information within the meaning of Section 1040 of the Evidence Code.

3178. An agreement reached by the parties as a result of mediation shall be limited as follows:
   (a) Where mediation is required to settle a contested issue of custody or visitation, the agreement shall be limited to the resolution of issues relating to parenting plans, custody, visitation, or a combination of these issues.
   (b) Where a stepparent or grandparent seeks visitation rights, the agreement shall be limited to the resolution of issues relating to visitation.

3179. A custody or visitation agreement reached as a result of mediation may be modified at any time at the discretion of the court, subject to Chapter 1 (commencing with Section 3020), Chapter 2 (commencing with Section 3040), Chapter 4 (commencing with Section 3080), and Chapter 5 (commencing with Section 3100).

3180. (a) In mediation proceedings pursuant to this chapter, the mediator has the duty to assess the needs and interests of the child involved in the controversy, and is entitled to interview the child where the mediator considers the interview appropriate or necessary.
   (b) The mediator shall use his or her best efforts to effect a
settlement of the custody or visitation dispute that is in the best interest of the child, as provided in Section 3011.

3181. (a) In a proceeding in which mediation is required pursuant to this chapter, where there has been a history of domestic violence between the parties or where a protective order as defined in Section 6218 is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or protected by the order, the mediator appointed pursuant to this chapter shall meet with the parties separately and at separate times.

(b) Any intake form that an agency charged with providing family court services requires the parties to complete before the commencement of mediation shall state that, if a party alleging domestic violence in a written declaration under penalty of perjury or a party protected by a protective order so requests, the mediator will meet with the parties separately and at separate times.

3182. (a) The mediator has authority to exclude counsel from participation in the mediation proceedings pursuant to this chapter if, in the mediator's discretion, exclusion of counsel is appropriate or necessary.

(b) The mediator has authority to exclude a domestic violence support person from a mediation proceeding as provided in Section 6303.

3183. (a) Except as provided in Section 3188, the mediator may, consistent with local court rules, submit a recommendation to the court as to the custody of or visitation with the child, if the mediator has first provided the parties and their attorneys, including counsel for any minor children, with the recommendations in writing in advance of the hearing. The court shall make an inquiry at the hearing as to whether the parties and their attorneys have received the recommendations in writing. If the mediator is authorized to submit a recommendation to the court pursuant to this subdivision, the mediation and recommendation process shall be referred to as "child custody recommending counseling" and the mediator shall be referred to as a "child custody recommending counselor." Mediators who make those recommendations are considered mediators for purposes of Chapter 11 (commencing with Section 3160), and shall be subject to all requirements for mediators for all purposes under this code and the California Rules of Court. On and after January 1, 2012, all court communications and information regarding the child custody recommending counseling process shall reflect the change in the name of the process and the name of the providers.

(b) If the parties have not reached agreement as a result of the mediation proceedings, the mediator may recommend to the court that an investigation be conducted pursuant to Chapter 6 (commencing with Section 3110) or that other services be offered to assist the parties to effect a resolution of the controversy before a hearing on the issues.

(c) In appropriate cases, the mediator may recommend that restraining orders be issued, pending determination of the controversy, to protect the well-being of the child involved in the
3184. Except as provided in Section 3188, nothing in this chapter prohibits the mediator from recommending to the court that counsel be appointed, pursuant to Chapter 10 (commencing with Section 3150), to represent the minor child. In making this recommendation, the mediator shall inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed.

3185. (a) If issues that may be resolved by agreement pursuant to Section 3178 are not resolved by an agreement of all the parties who participate in mediation, the mediator shall inform the court in writing and the court shall set the matter for hearing on the unresolved issues.

(b) Where a stepparent or grandparent requests visitation, each natural or adoptive parent and the stepparent or grandparent shall be given an opportunity to appear and be heard on the issue of visitation.

3186. (a) An agreement reached by the parties as a result of mediation shall be reported to counsel for the parties by the mediator on the day set for mediation or as soon thereafter as practical, but before the agreement is reported to the court.

(b) An agreement may not be confirmed or otherwise incorporated in an order unless each party, in person or by counsel of record, has affirmed and assented to the agreement in open court or by written stipulation.

(c) An agreement may be confirmed or otherwise incorporated in an order if a party fails to appear at a noticed hearing on the issue involved in the agreement.

3188. (a) Any court selected by the Judicial Council under subdivision (c) may voluntarily adopt a confidential mediation program that provides for all of the following:

(1) The mediator may not make a recommendation as to custody or visitation to anyone other than the disputing parties, except as otherwise provided in this section.

(2) If total or partial agreement is reached in mediation, the mediator may report this fact to the court. If both parties consent in writing, where there is a partial agreement, the mediator may report to the court a description of the issues still in dispute, without specific reference to either party.

(3) In making the recommendation described in Section 3184, the mediator may not inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed.

(4) If the parties have not reached agreement as a result of the initial mediation, this section does not prohibit the court from requiring subsequent mediation that may result in a recommendation as to custody or visitation with the child if the subsequent mediation is conducted by a different mediator with no prior involvement with the case or knowledge of any communications, as defined in Section 1040 of the Evidence Code, with respect to the initial mediation. The court, however, shall inform the parties that the mediator will make
a recommendation to the court regarding custody or visitation in the event that the parties cannot reach agreement on these issues.

(5) If an initial screening or intake process indicates that the case involves serious safety risks to the child, such as domestic violence, sexual abuse, or serious substance abuse, the court may provide an initial emergency assessment service that includes a recommendation to the court concerning temporary custody or visitation orders in order to expeditiously address those safety issues.

(b) This section shall become operative upon the appropriation of funds in the annual Budget Act sufficient to implement this section.

c) This section shall apply only in four or more counties selected by the Judicial Council that currently allow a mediator to make custody recommendations to the court and have more than 1,000 family law case filings per year. The Judicial Council may also make this section applicable to additional counties that have fewer than 1,000 family law case filings per year.
CALIFORNIA CODES
FAMILY CODE
SECTION 3110-3118

3110. As used in this chapter, "court-appointed investigator" means a probation officer, domestic relations investigator, or court-appointed evaluator directed by the court to conduct an investigation pursuant to this chapter.

3110.5. (a) No person may be a court-connected or private child custody evaluator under this chapter unless the person has completed the domestic violence and child abuse training program described in Section 1816 and has complied with Rules 5.220 and 5.230 of the California Rules of Court.

(b) (1) On or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.

(A) The rule shall require a child custody evaluator to declare under penalty of perjury that he or she meets all of the education, experience, and training requirements specified in the rule and, if applicable, possesses a license in good standing. The Judicial Council shall establish forms to implement this section. The rule shall permit court-connected evaluators to conduct evaluations if they meet all of the qualifications established by the Judicial Council. The education, experience, and training requirements to be specified for court-connected evaluators shall include, but not be limited to, knowledge of the psychological and developmental needs of children and parent-child relationships.

(B) The rule shall require all evaluators to utilize comparable interview, assessment, and testing procedures for all parties that are consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. The rule shall also require evaluators to inform each adult party of the purpose, nature, and method of the evaluation.

(C) The rule may allow courts to permit the parties to stipulate to an evaluator of their choosing with the approval of the court under the circumstances set forth in subdivision (d). The rule may require courts to provide general information about how parties can contact qualified child custody evaluators in their county.

(2) On or before January 1, 2004, the Judicial Council shall include in the statewide rule of court created pursuant to this section a requirement that all court-connected and private child custody evaluators receive training in the nature of child sexual abuse. The Judicial Council shall develop standards for this training that shall include, but not be limited to, the following:

(A) Children's patterns of hiding and disclosing sexual abuse occurring in a family setting.

(B) The effects of sexual abuse on children.

(C) The nature and extent of child sexual abuse.

(D) The social and family dynamics of child sexual abuse.

(E) Techniques for identifying and assisting families affected by child sexual abuse.
(F) Legal rights, protections, and remedies available to victims of child sexual abuse.

c) In addition to the education, experience, and training requirements established by the Judicial Council pursuant to subdivision (b), on or after January 1, 2005, no person may be a child custody evaluator under this chapter, Section 730 of the Evidence Code, or Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure unless the person meets one of the following criteria:

1. He or she is licensed as a physician under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and either is a board certified psychiatrist or has completed a residency in psychiatry.

2. He or she is licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

3. He or she is licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

4. He or she is licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

5. He or she is a court-connected evaluator who has been certified by the court as meeting all of the qualifications for court-connected evaluators as specified by the Judicial Council pursuant to subdivision (b).

d) Subdivision (c) does not apply in any case where the court determines that there are no evaluators who meet the criteria of subdivision (c) who are willing and available, within a reasonable period of time, to perform child custody evaluations. In those cases, the parties may stipulate to an individual who does not meet the criteria of subdivision (c), subject to approval by the court.

e) A child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that licensee.

(f) On or after January 1, 2005, a court-connected or private child custody evaluator may not evaluate, investigate, or mediate an issue of child custody in a proceeding pursuant to this division unless that person has completed child sexual abuse training as required by this section.

3111. (a) In any contested proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases where the court determines it is in the best interests of the child. The child custody evaluation shall be conducted in accordance with the standards adopted by the Judicial Council pursuant to Section 3117, and all other standards adopted by the Judicial Council regarding child custody evaluations. If directed by the court, the court-appointed child custody evaluator shall file a written confidential report on his or her evaluation. At least 10 days before any hearing regarding custody of the child, the report shall be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys, and any other counsel appointed for the child pursuant to Section 3150. The report may be considered by the court.
(b) The report shall not be made available other than as provided in subdivision (a), or as described in Section 204 of the Welfare and Institutions Code or Section 1514.5 of the Probate Code. Any information obtained from access to a juvenile court case file, as defined in subdivision (e) of Section 827 of the Welfare and Institutions Code, is confidential and shall only be disseminated as provided by paragraph (4) of subdivision (a) of Section 827 of the Welfare and Institutions Code.

(c) The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report.

(d) If the court determines that an unwarranted disclosure of a written confidential report has been made, the court may impose a monetary sanction against the disclosing party. The sanction shall be in an amount sufficient to deter repetition of the conduct, and may include reasonable attorney's fees, costs incurred, or both, unless the court finds that the disclosing party acted with substantial justification or that other circumstances make the imposition of the sanction unjust. The court shall not impose a sanction pursuant to this subdivision that imposes an unreasonable financial burden on the party against whom the sanction is imposed. This subdivision shall become operative on January 1, 2010.

(e) The Judicial Council shall, by January 1, 2010, do the following:

(1) Adopt a form to be served with every child custody evaluation report that informs the report recipient of the confidentiality of the report and the potential consequences for the unwarranted disclosure of the report.

(2) Adopt a rule of court to require that, when a court-ordered child custody evaluation report is served on the parties, the form specified in paragraph (1) shall be included with the report.

(f) For purposes of this section, a disclosure is unwarranted if it is done either recklessly or maliciously, and is not in the best interests of the child.

3112. (a) Where a court-appointed investigator is directed by the court to conduct a custody investigation or evaluation pursuant to this chapter or to undertake visitation work, including necessary evaluation, supervision, and reporting, the court shall inquire into the financial condition of the parent, guardian, or other person charged with the support of the minor. If the court finds the parent, guardian, or other person able to pay all or part of the expense of the investigation, report, and recommendation, the court may make an order requiring the parent, guardian, or other person to repay the court the amount the court determines proper.

(b) The repayment shall be made to the court. The court shall keep suitable accounts of the expenses and repayments and shall deposit the collections as directed by the Judicial Council.

3113. Where there has been a history of domestic violence between the parties, or where a protective order as defined in Section 6218 is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or at the request of a party who is protected by the order, the parties shall meet with the court-appointed investigator separately and at separate times.
3114. Nothing in this chapter prohibits a court-appointed investigator from recommending to the court that counsel be appointed pursuant to Chapter 10 (commencing with Section 3150) to represent the minor child. In making that recommendation, the court-appointed investigator shall inform the court of the reasons why it would be in the best interest of the child to have counsel appointed.

3115. No statement, whether written or oral, or conduct shall be held to constitute a waiver by a party of the right to cross-examine the court-appointed investigator, unless the statement is made, or the conduct occurs, after the report has been received by a party or his or her attorney.

3116. Nothing in this chapter limits the duty of a court-appointed investigator to assist the appointing court in the transaction of the business of the court.

3117. The Judicial Council shall, by January 1, 1999, do both of the following:

(a) Adopt standards for full and partial court-connected evaluations, investigations, and assessments related to child custody.

(b) Adopt procedural guidelines for the expeditious and cost-effective cross-examination of court-appointed investigators, including, but not limited to, the use of electronic technology whereby the court-appointed investigator may not need to be present in the courtroom. These guidelines shall in no way limit the requirement that the court-appointed investigator be available for the purposes of cross-examination. These guidelines shall also provide for written notification to the parties of the right to cross-examine these investigators after the parties have had a reasonable time to review the investigator's report.

3118. (a) In any contested proceeding involving child custody or visitation rights, where the court has appointed a child custody evaluator or has referred a case for a full or partial court-connected evaluation, investigation, or assessment, and the court determines that there is a serious allegation of child sexual abuse, the court shall require an evaluation, investigation, or assessment pursuant to this section. When the court has determined that there is a serious allegation of child sexual abuse, any child custody evaluation, investigation, or assessment conducted subsequent to that determination shall be considered by the court only if the evaluation, investigation, or assessment is conducted in accordance with the minimum requirements set forth in this section in determining custody or visitation rights, except as specified in paragraph (1). For purposes of this section, a serious allegation of child sexual abuse means an allegation of child sexual abuse, as defined in Section 11165.1 of the Penal Code, that is based in whole or in part on statements made by the child to law enforcement, a
child welfare services agency investigator, any person required by statute to report suspected child abuse, or any other court-appointed personnel, or that is supported by substantial independent corroboration as provided for in subdivision (b) of Section 3011. When an allegation of child abuse arises in any other circumstances in any proceeding involving child custody or visitation rights, the court may require an evaluator or investigator to conduct an evaluation, investigation, or assessment pursuant to this section. The order appointing a child custody evaluator or investigator pursuant to this section shall provide that the evaluator or investigator have access to all juvenile court records pertaining to the child who is the subject of the evaluation, investigation, or assessment. The order shall also provide that any juvenile court records or information gained from those records remain confidential and shall only be released as specified in Section 3111.

(1) This section does not apply to any emergency court-ordered partial investigation that is conducted for the purpose of assisting the court in determining what immediate temporary orders may be necessary to protect and meet the immediate needs of a child. This section does apply when the emergency is resolved and the court is considering permanent child custody or visitation orders.

(2) This section does not prohibit a court from considering evidence relevant to determining the safety and protection needs of the child.

(3) Any evaluation, investigation, or assessment conducted pursuant to this section shall be conducted by an evaluator or investigator who meets the qualifications set forth in Section 3110.5.

(b) The evaluator or investigator shall, at a minimum, do all of the following:

(1) Consult with the agency providing child welfare services and law enforcement regarding the allegations of child sexual abuse, and obtain recommendations from these professionals regarding the child's safety and the child's need for protection.

(2) Review and summarize the child welfare services agency file. No document contained in the child welfare services agency file may be photocopied, but a summary of the information in the file, including statements made by the children and the parents, and the recommendations made or anticipated to be made by the child welfare services agency to the juvenile court, may be recorded by the evaluator or investigator, except for the identity of the reporting party. The evaluator's or investigator's notes summarizing the child welfare services agency information shall be stored in a file separate from the evaluator's or investigator's file and may only be released to either party under order of the court.

(3) Obtain from a law enforcement investigator all available information obtained from criminal background checks of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse.

(4) Review the results of a multidisciplinary child interview team (hereafter MDIT) interview if available, or if not, or if the evaluator or investigator believes the MDIT interview is inadequate for purposes of the evaluation, investigation, or assessment, interview the child or request an MDIT interview, and shall wherever possible avoid repeated interviews of the child.

(5) Request a forensic medical examination of the child from the appropriate agency, or include in the report required by paragraph (6) a written statement explaining why the examination is not needed.

(6) File a confidential written report with the clerk of the court.
in which the custody hearing will be conducted and which shall be served on the parties or their attorneys at least 10 days prior to the hearing. This report may not be made available other than as provided in this subdivision. This report shall include, but is not limited to, the following:

(A) Documentation of material interviews, including any MDIT interview of the child or the evaluator or investigator, written documentation of interviews with both parents by the evaluator or investigator, and interviews with other witnesses who provided relevant information.

(B) A summary of any law enforcement investigator's investigation, including information obtained from the criminal background check of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse.

(C) Relevant background material, including, but not limited to, a summary of a written report from any therapist treating the child for suspected child sexual abuse, excluding any communication subject to Section 1014 of the Evidence Code, reports from other professionals, and the results of any forensic medical examination and any other medical examination or treatment that could help establish or disprove whether the child has been the victim of sexual abuse.

(D) The written recommendations of the evaluator or investigator regarding the therapeutic needs of the child and how to ensure the safety of the child.

(E) A summary of the following information: whether the child and his or her parents are or have been the subject of a child abuse investigation and the disposition of that investigation; the name, location, and telephone number of the children's services worker; the status of the investigation and the recommendations made or anticipated to be made regarding the child's safety; and any dependency court orders or findings that might have a bearing on the custody dispute.

(F) Any information regarding the presence of domestic violence or substance abuse in the family that has been obtained from a child protective agency in accordance with paragraphs (1) and (2), a law enforcement agency, medical personnel or records, prior or currently treating therapists, excluding any communication subject to Section 1014 of the Evidence Code, or from interviews conducted or reviewed for this evaluation, investigation, or assessment.

(G) Which, if any, family members are known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence.

(H) Any other information the evaluator or investigator believes would be helpful to the court in determining what is in the best interests of the child.

(c) If the evaluator or investigator obtains information as part of a family court mediation, that information shall be maintained in the family court file, which is not subject to subpoena by either party. If, however, the members of the family are the subject of an ongoing child welfare services investigation, or the evaluator or investigator has made a child welfare services referral, the evaluator or investigator shall so inform the family law judicial officer in writing and this information shall become part of the family law file. This subdivision may not be construed to authorize or require a mediator to disclose any information not otherwise authorized or required by law to be disclosed.

(d) In accordance with subdivision (d) of Section 11167 of the Penal Code, the evaluator or investigator may not disclose any
information regarding the identity of any person making a report of suspected child abuse. Nothing in this section is intended to limit any disclosure of information by any agency that is otherwise required by law or court order.

(e) The evaluation, investigation, or assessment standards set forth in this section represent minimum requirements of evaluation and the court shall order further evaluation beyond these minimum requirements when necessary to determine the safety needs of the child.

(f) If the court orders an evaluation, investigation, or assessment pursuant to this section, the court shall consider whether the best interests of the child require that a temporary order be issued that limits visitation with the parent against whom the allegations have been made to situations in which a third person specified by the court is present or whether visitation will be suspended or denied in accordance with Section 3011.

(g) An evaluation, investigation, or assessment pursuant to this section shall be suspended if a petition is filed to declare the child a dependent child of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and all information gathered by the evaluator or investigator shall be made available to the juvenile court.

(h) This section may not be construed to authorize a court to issue any orders in a proceeding pursuant to this division regarding custody or visitation with respect to a minor child who is the subject of a dependency hearing in juvenile court or to otherwise supersede Section 302 of the Welfare and Institutions Code.
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3020. (a) The Legislature finds and declares that it is the public policy of this state to assure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interest of children when making any orders regarding the physical or legal custody or visitation of children. The Legislature further finds and declares that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child.

(b) The Legislature finds and declares that it is the public policy of this state to assure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except where the contact would not be in the best interest of the child, as provided in Section 3011.

(c) Where the policies set forth in subdivisions (a) and (b) of this section are in conflict, any court's order regarding physical or legal custody or visitation shall be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members.

3021. This part applies in any of the following:
   (a) A proceeding for dissolution of marriage.
   (b) A proceeding for nullity of marriage.
   (c) A proceeding for legal separation of the parties.
   (d) An action for exclusive custody pursuant to Section 3120.
   (e) A proceeding to determine physical or legal custody or for visitation in a proceeding pursuant to the Domestic Violence Prevention Act (Division 10 (commencing with Section 6200)).
      In an action under Section 6323, nothing in this subdivision shall be construed to authorize physical or legal custody, or visitation rights, to be granted to any party to a Domestic Violence Prevention Act proceeding who has not established a parent and child relationship pursuant to paragraph (2) of subdivision (a) of Section 6323.
   (f) A proceeding to determine physical or legal custody or visitation in an action pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).
   (g) A proceeding to determine physical or legal custody or visitation in an action brought by the district attorney pursuant to Section 17404.

3022. The court may, during the pendency of a proceeding or at any time thereafter, make an order for the custody of a child during minority that seems necessary or proper.

3022.3. Upon the trial of a question of fact in a proceeding to
determine the custody of a minor child, the court shall, upon the request of either party, issue a statement of the decision explaining the factual and legal basis for its decision pursuant to Section 632 of the Code of Civil Procedure.

3022.5. A motion by a parent for reconsideration of an existing child custody order shall be granted if the motion is based on the fact that the other parent was convicted of a crime in connection with falsely accusing the moving parent of child abuse.

3023. (a) If custody of a minor child is the sole contested issue, the case shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date and shall be given an early hearing.  
(b) If there is more than one contested issue and one of the issues is the custody of a minor child, the court, as to the issue of custody, shall order a separate trial. The separate trial shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date.

3024. In making an order for custody, if the court does not consider it inappropriate, the court may specify that a parent shall notify the other parent if the parent plans to change the residence of the child for more than 30 days, unless there is prior written agreement to the removal. The notice shall be given before the contemplated move, by mail, return receipt requested, postage prepaid, to the last known address of the parent to be notified. A copy of the notice shall also be sent to that parent's counsel of record. To the extent feasible, the notice shall be provided within a minimum of 45 days before the proposed change of residence so as to allow time for mediation of a new agreement concerning custody. This section does not affect orders made before January 1, 1989.

3025. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, shall not be denied to a parent because that parent is not the child's custodial parent.

3025.5. In any proceeding involving child custody or visitation rights, if a report containing psychological evaluations of a child or recommendations regarding custody of, or visitation with, a child is submitted to the court, including, but not limited to, a report created pursuant to Chapter 6 (commencing with Section 3110) of this part, a recommendation made to the court pursuant to Section 3183, and a written statement of issues and contentions pursuant to subdivision (b) of Section 3151, that information shall be contained in a document that shall be placed in the confidential portion of the court file of the proceeding, and may not be disclosed, except to
the following persons:
(a) A party to the proceeding and his or her attorney.
(b) A federal or state law enforcement officer, judicial officer, court employee, or family court facilitator for the county in which the action was filed, or an employee or agent of that facilitator, acting within the scope of his or her duties.
(c) Counsel appointed for the child pursuant to Section 3150.
(d) Any other person upon order of the court for good cause.

3026. Family reunification services shall not be ordered as a part of a child custody or visitation rights proceeding. Nothing in this section affects the applicability of Section 16507 of the Welfare and Institutions Code.

3027. (a) If allegations of child abuse, including child sexual abuse, are made during a child custody proceeding and the court has concerns regarding the child's safety, the court may take any reasonable, temporary steps as the court, in its discretion, deems appropriate under the circumstances to protect the child's safety until an investigation can be completed. Nothing in this section shall affect the applicability of Section 16504 or 16506 of the Welfare and Institutions Code.

(b) If allegations of child abuse, including child sexual abuse, are made during a child custody proceeding, the court may request that the local child welfare services agency conduct an investigation of the allegations pursuant to Section 328 of the Welfare and Institutions Code. Upon completion of the investigation, the agency shall report its findings to the court.

3027.1. (a) If a court determines, based on the investigation described in Section 3027 or other evidence presented to it, that an accusation of child abuse or neglect made during a child custody proceeding is false and the person making the accusation knew it to be false at the time the accusation was made, the court may impose reasonable money sanctions, not to exceed all costs incurred by the party accused as a direct result of defending the accusation, and reasonable attorney's fees incurred in recovering the sanctions, against the person making the accusation. For the purposes of this section, "person" includes a witness, a party, or a party's attorney.

(b) On motion by any person requesting sanctions under this section, the court shall issue its order to show cause why the requested sanctions should not be imposed. The order to show cause shall be served on the person against whom the sanctions are sought and a hearing thereon shall be scheduled by the court to be conducted at least 15 days after the order is served.

(c) The remedy provided by this section is in addition to any other remedy provided by law.

3027.5. (a) No parent shall be placed on supervised visitation, or be denied custody of or visitation with his or her child, and no custody or visitation rights shall be limited, solely because the parent (1) lawfully reported suspected sexual abuse of the child, (2)
otherwise acted lawfully, based on a reasonable belief, to determine if his or her child was the victim of sexual abuse, or (3) sought treatment for the child from a licensed mental health professional for suspected sexual abuse.

(b) The court may order supervised visitation or limit a parent's custody or visitation if the court finds substantial evidence that the parent, with the intent to interfere with the other parent's lawful contact with the child, made a report of child sexual abuse, during a child custody proceeding or at any other time, that he or she knew was false at the time it was made. Any limitation of custody or visitation, including an order for supervised visitation, pursuant to this subdivision, or any statute regarding the making of a false child abuse report, shall be imposed only after the court has determined that the limitation is necessary to protect the health, safety, and welfare of the child, and the court has considered the state's policy of assuring that children have frequent and continuing contact with both parents as declared in subdivision (b) of Section 3020.

3028. (a) The court may order financial compensation for periods when a parent fails to assume the caretaker responsibility or when a parent has been thwarted by the other parent when attempting to exercise custody or visitation rights contemplated by a custody or visitation order, including, but not limited to, an order for joint physical custody, or by a written or oral agreement between the parents.

(b) The compensation shall be limited to (1) the reasonable expenses incurred for or on behalf of a child, resulting from the other parent's failure to assume caretaker responsibility or (2) the reasonable expenses incurred by a parent for or on behalf of a child, resulting from the other parent's thwarting of the parent's efforts to exercise custody or visitation rights. The expenses may include the value of caretaker services but are not limited to the cost of services provided by a third party during the relevant period.

(c) The compensation may be requested by noticed motion or an order to show cause, which shall allege, under penalty of perjury, (1) a minimum of one hundred dollars ($100) of expenses incurred or (2) at least three occurrences of failure to exercise custody or visitation rights or (3) at least three occurrences of the thwarting of efforts to exercise custody or visitation rights within the six months before filing of the motion or order.

(d) Attorney's fees shall be awarded to the prevailing party upon a showing of the nonprevailing party's ability to pay as required by Section 270.

3029. An order granting custody to a parent who is receiving, or in the opinion of the court is likely to receive, assistance pursuant to the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code) for the maintenance of the child shall include an order pursuant to Chapter 2 (commencing with Section 4000) of Part 2 of Division 9 of this code, directing the noncustodial parent to pay any amount necessary for the support of the child, to the extent of the noncustodial parent's ability to pay.
3030. (a) (1) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record. The child may not be placed in a home in which that person resides, nor permitted to have unsupervised visitation with that person, unless the court states the reasons for its findings in writing or on the record.

(2) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if anyone residing in the person's household is required, as a result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code, unless the court finds there is no significant risk to the child and states its reasons in writing or on the record. The child may not be placed in a home in which that person resides, nor permitted to have unsupervised visitation with that person, unless the court states the reasons for its findings in writing or on the record.

(3) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code, shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the party seeking custody or visitation is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code.

(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation.

(c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or on the record. In making its finding, the court may consider, among other things, the following:

(1) The wishes of the child, if the child is of sufficient age and capacity to reason so as to form an intelligent preference.

(2) Credible evidence that the convicted parent was a victim of abuse, as defined in Section 6203, committed by the deceased parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.

(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code, that the convicted parent experiences intimate partner battering.

Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child's custodian or legal guardian.
(d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the local child support agency, as authorized by Section 4573 of the Family Code and Division 17 (commencing with Section 17000) of this code.

(e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interest of the child.

3030.5. (a) Upon the motion of one or both parents, or the legal guardian or custodian, or upon the court's own motion, an order granting physical or legal custody of, or unsupervised visitation with, a child may be modified or terminated if either of the following circumstances has occurred since the order was entered, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record:

(1) The person who has been granted physical or legal custody of, or unsupervised visitation with the child is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code.

(2) The person who has been granted physical or legal custody of, or unsupervised visitation with, the child resides with another person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code.

(b) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code, shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the party seeking custody or visitation is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code.

(c) The court shall not modify an existing custody or visitation order upon the ex parte petition of one party pursuant to this section without providing notice to the other party and an opportunity to be heard. This notice provision applies only when the motion for custody or visitation change is based solely on the fact that the child is allowed unsupervised contact with a person required, as a result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code and does not affect the court's ability to remove a child upon an ex parte motion when there is a showing of immediate harm to the child.

3031. (a) Where the court considers the issue of custody or visitation the court is encouraged to make a reasonable effort to ascertain whether or not any emergency protective order, protective order, or other restraining order is in effect that concerns the parties or the minor. The court is encouraged not to make a custody or visitation order that is inconsistent with the emergency protective order, protective order, or other restraining order,
unless the court makes both of the following findings:
(1) The custody or visitation order cannot be made consistent with the emergency protective order, protective order, or other restraining order.
(2) The custody or visitation order is in the best interest of the minor.

(b) Whenever custody or visitation is granted to a parent in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the custody or visitation order shall specify the time, day, place, and manner of transfer of the child for custody or visitation to limit the child’s exposure to potential domestic conflict or violence and to ensure the safety of all family members. Where the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for custody or visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location.

(c) When making an order for custody or visitation in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the court shall consider whether the best interest of the child, based upon the circumstances of the case, requires that any custody or visitation arrangement shall be limited to situations in which a third person, specified by the court, is present, or whether custody or visitation shall be suspended or denied.

3032. (a) The Judicial Council shall establish a state-funded one-year pilot project beginning July 1, 1999, in at least two counties, including Los Angeles County, pursuant to which, in any child custody proceeding, including mediation proceedings pursuant to Section 3170, any action or proceeding under Division 10 (commencing with Section 6200), any action or proceeding under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12), and any proceeding for dissolution or nullity of marriage or legal separation of the parties in which a protective order as been granted or is being sought pursuant to Section 6221, the court shall, notwithstanding Section 68092 of the Government Code, appoint an interpreter to interpret the proceedings at court expense, if both of the following conditions are met:
(1) One or both of the parties is unable to participate fully in the proceeding due to a lack of proficiency in the English language.
(2) The party who needs an interpreter appears in forma pauperis, pursuant to Section 68511.3 of the Government Code, or the court otherwise determines that the parties are financially unable to pay the cost of an interpreter. In all other cases where an interpreter is required pursuant to this section, interpreter fees shall be paid as provided in Section 68092 of the Government Code.

(3) This section shall not prohibit the court doing any of the following when an interpreter is not present:
(A) Issuing an order when the necessity for the order outweighs the necessity for an interpreter.
(B) Extending the duration of a previously issued temporary order if an interpreter is not readily available.
(C) Issuing a permanent order where a party who requires an interpreter fails to make appropriate arrangements for an interpreter after receiving proper notice of the hearing, including notice of
the requirement to have an interpreter present, along with information about obtaining an interpreter.

(b) The Judicial Council shall submit its findings and recommendations with respect to the pilot project to the Legislature by January 31, 2001. Measurable objectives of the program may include increased utilization of the court by parties not fluent in English, increased efficiency in proceedings, increased compliance with orders, enhanced coordination between courts and culturally relevant services in the community, increased client satisfaction, and increased public satisfaction.
To:  Board Members

From:  Rosanne Helms
Legislative Analyst

Subject:  90-Day Rule Legislative Proposal

Date:  May 3, 2012

Telephone:  (916) 574-7897

Background

Under current law, an applicant for marriage and family therapy (MFT) or professional clinical counselor (PCC) intern registration must apply for intern registration within 90 days of the granting of his or her qualifying degree in order to be able to count supervised experience hours gained toward licensure while he or she is waiting for the Board to grant registration as an intern (Business and Professions Code (BPC) §§ 4980.43(g), 4999.46(d)). This allowance in the law is commonly referred to as “the 90-day rule.”

There is no 90-day rule for applicants for associate social worker (ASW) registration. They may not gain supervised experience hours until registered as an ASW (BPC § 4996.23(f)).

Proposal to Eliminate the 90-Day Rule

At its November 9, 2011 meeting, the Board approved amendments to eliminate the 90-day rule for MFT and PCC intern applicants, and directed staff to seek Board-sponsored legislation. The need for this bill was based on the following:

1. Need for Increased Consumer Protection

   There are concerns that the 90-day rule allows an applicant to practice unlicensed and outside of Board jurisdiction while temporarily bypassing the Board’s enforcement process.

   Under the 90-day rule, an applicant who has a previous conviction can submit an application for intern registration within 90 days of the degree being granted. They then have up to one year to submit their conviction records (considered a deficiency) to the Board for review. Although most submit the information quickly, an applicant with a serious conviction will occasionally try to delay, taking their one year period to submit the requested information. Occasionally, they also decide during this time period that they want to abandon their application. However, because they have followed the 90-day rule, they may then gain supervised experience during this one-year time period without any restrictions the Board might place on them due to their prior conviction. Once the Board’s enforcement division obtains the conviction information and decides to deny or restrict the registration, they have already been gaining experience hours toward licensure.
If a consumer or the supervisor were to file a complaint against such a practitioner during this time, the Board would have no jurisdiction to investigate the complaint and take action, as they are not yet a registered intern.

2. **Decreased Application Processing Times at the Board**

   The 90-day rule was put into place many years ago when applicants for licensure were required to submit fingerprints on paper cards (called “hard cards”) to the Board so that their criminal background could be checked. These hard cards were then processed by the Board and then physically sent to the Department of Justice (DOJ) and then to the FBI so that a background check could be performed by both of these agencies. This entire process could take up to three months before the Board received the results.

   Today, the Board uses Livescan fingerprinting, which is an electronic fingerprinting system. An applicant submits electronic fingerprints, which are then sent to the DOJ and the FBI for the background check. The Board now receives the results of electronic fingerprints in approximately three to seven days.

   The adoption of Livescan fingerprinting has significantly decreased the time it takes for the Board to process an application. Therefore, requiring an applicant to wait to gain hours until they are issued a registration number (currently 38-43 days on average) is now less cumbersome than in the past, when it would be a several month wait just to get the hard card fingerprinting results.

**Status of the 90-Day Rule Legislative Proposal**

Due to concerns cited by stakeholders, the Board agreed to revisit the 90-day rule proposal at its February 29, 2012 Board meeting. At this meeting, stakeholders noted that there are no statistics available to show how often an applicant who followed the 90-day rule and is gaining hours is referred to the Board’s Enforcement division and, upon further investigation, is denied the registration or issued a restricted registration.

Board staff approached several legislative offices in January and February about authoring the 90-day rule proposal. Although several offices were interested and stated that they may be interested in running this bill in 2013, this same concern about lack of statistics was cited by several legislative staff members.

The Board has not kept statistics on this particular scenario in the past. The amendments to eliminate the 90-day rule were proposed after the Board’s enforcement division raised concerns that they were noticing that sometimes applicants with a criminal history follow the 90-day rule, and then may gain hours while the enforcement division investigates their application. Upon request for information from enforcement, they have one year to provide the information, and some of these applicants wait until the end of their one-year period to submit the requested information to the Board.

At the February 29, 2012 Board meeting, the Board decided the send this proposal back to the Policy and Advocacy Committee for further discussion of available options.

**Recommendation**

At the April 19, 2012 Policy and Advocacy Committee meeting, staff recommended that the enforcement division gather data over a one-year time period in order to allow the Board to determine the extent of the problem of applicants with a criminal history abusing the 90-day rule. Data on the following instances should be gathered:

1. Number of applicants with a criminal conviction who, while gaining hours, wait until the end of their one-year deficiency period (defined as the last two months) to submit any information requested by the Board’s enforcement division.
2. Number of instances in which an applicant follows the 90-day rule and begins gaining hours, only to have their registration denied due to the findings of the enforcement division.

3. Number of instances in which a denial of an application, due to enforcement division findings, is appealed and the applicant subsequently is granted a registration with restrictions.

4. In cases where a registration was denied or restricted due to enforcement division findings, the nature of the offenses that led to each particular denial or restriction should be tracked.

Based on the staff recommendation, the Policy and Advocacy Committee recommended that the Board do the following:

- Rescind the November 9, 2001 Board meeting motion to submit the proposed amendments as legislation to eliminate the 90-day rule; and

- Direct staff to collect data on the four instances outlined above, from May 2012 to May 2013, and to report this data to the Board at its May 2013 meeting.

Attachments
A. Board-Approved Proposed Amendments
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Attachment A
Proposed Amendments

Licensed Marriage and Family Therapist
§4980.43
(a) Prior to applying for licensure examinations, each applicant shall complete experience that shall comply with the following:

(1) A minimum of 3,000 hours completed during a period of at least 104 weeks.
(2) Not more than 40 hours in any seven consecutive days.
(3) Not less than 1,700 hours of supervised experience completed subsequent to the granting of the qualifying master’s or doctoral degree.
(4) Not more than 1,300 hours of supervised experience obtained prior to completing a master’s or doctoral degree.

The applicant shall not be credited with more than 750 hours of counseling and direct supervisor contact prior to completing the master’s or doctoral degree.

(5) No hours of experience may be gained prior to completing either 12 semester units or 18 quarter units of graduate instruction and becoming a trainee except for personal psychotherapy.

(6) No hours of experience may be gained more than six years prior to the date the application for examination eligibility was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (c) of Section 4980.37 and subparagraph (B) of paragraph (1) of subdivision (d) of Section 4980.36 shall be exempt from this six-year requirement.

(7) Not more than a combined total of 1,000 hours of experience in the following:

(A) Direct supervisor contact.
(B) Professional enrichment activities. For purposes of this chapter, “professional enrichment activities” include the following:

(i) Workshops, seminars, training sessions, or conferences directly related to marriage and family therapy attended by the applicant that are approved by the applicant’s supervisor. An applicant shall have no more than 250 hours of verified attendance at these workshops, seminars, training sessions, or conferences.
(ii) Participation by the applicant in personal psychotherapy, which includes group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional. An applicant shall have no more than 100 hours of participation in personal psychotherapy. The applicant shall be credited with three hours of experience for each hour of personal psychotherapy.

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) For all hours gained on or after January 1, 2012, not more than 500 hours of experience in the following:

(A) Experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes.
(B) Client centered advocacy.
(10) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children. For up to 150 hours of treating couples and families in conjoint therapy, the applicant shall be credited with two hours of experience for each hour of therapy provided.

(11) Not more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telehealth in accordance with Section 2290.5.

(12) It is anticipated and encouraged that hours of experience will include working with elders and dependent adults who have physical or mental limitations that restrict their ability to carry out normal activities or protect their rights.

This subdivision shall only apply to hours gained on and after January 1, 2010.

(b) All applicants, trainees, and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. Supervised experience shall be gained by interns and trainees either as an employee or as a volunteer. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(1) If employed, an intern shall provide the board with copies of the corresponding W-2 tax forms for each year of experience claimed upon application for licensure.

(2) If volunteering, an intern shall provide the board with a letter from his or her employer verifying the intern’s employment as a volunteer upon application for licensure.

(c) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting, as specified:

(1) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting.

(2) An individual supervised after being granted a qualifying degree shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of client contact is gained in each setting. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(3) For purposes of this section, “one hour of direct supervisor contact” means one hour per week of face-to-face contact on an individual basis or two hours per week of face-to-face contact in a group.

(4) Direct supervisor contact shall occur within the same week as the hours claimed.

(5) Direct supervisor contact provided in a group shall be provided in a group of not more than eight supervisees and in segments lasting no less than one continuous hour.

(6) Notwithstanding paragraph (3), an intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

(7) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation.

(d) (1) A trainee may be credited with supervised experience completed in any setting that meets all of the following:
(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the trainee’s work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(2) Experience may be gained by the trainee solely as part of the position for which the trainee volunteers or is employed.

(e) (1) An intern may be credited with supervised experience completed in any setting that meets both of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the intern’s work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(2) An applicant shall not be employed or volunteer in a private practice, as defined in subparagraph (C) of paragraph (1) of subdivision (d), until registered as an intern.

(3) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to interns.

(4) Except for periods of time during a supervisor’s vacation or sick leave, an intern who is employed or volunteering in private practice shall be under the direct supervision of a licensee that has satisfied the requirements of subdivision (g) of Section 4980.03. The supervising licensee shall either be employed by and practice at the same site as the intern’s employer, or shall be an owner or shareholder of the private practice. Alternative supervision may be arranged during a supervisor’s vacation or sick leave if the supervision meets the requirements of this section.

(5) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.

(f) Except as provided in subdivision (g), all persons shall register with the board as an intern in order to be credited for postdegree hours of supervised experience gained toward licensure.

(g) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master’s or doctoral degree and is thereafter granted the intern registration by the board. Postdegree experience shall not be gained until the applicant has been registered as a marriage and family therapist intern.

(h) Trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(i) Trainees, interns, and applicants shall only perform services at the place where their employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in their employers’ businesses and shall not lease or rent space, pay for furnishings, equipment or supplies, or in any other way pay for the obligations of their employers.
(j) Trainees, interns, or applicants who provide volunteered services or other services, and who receive no more than a total, from all work settings, of five hundred dollars ($500) per month as reimbursement for expenses actually incurred by those trainees, interns, or applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicants shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(k) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

**Licensed Professional Clinical Counselor**

§4999.46.

(a) To qualify for licensure, applicants shall complete clinical mental health experience under the general supervision of an approved supervisor as defined in Section 4999.12.

(b) The experience shall include a minimum of 3,000 postdegree hours of supervised clinical mental health experience related to the practice of professional clinical counseling, performed over a period of not less than two years (104 weeks) which shall include:

1. Not more than 40 hours in any seven consecutive days.

2. Not less than 1,750 hours of direct counseling with individuals or groups in a setting described in Section 4999.44 using a variety of psychotherapeutic techniques and recognized counseling interventions within the scope of practice of licensed professional clinical counselors.

3. Not more than 500 hours of experience providing group therapy or group counseling.

4. Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.

5. Not less than 150 hours of clinical experience in a hospital or community mental health setting.

6. Not more than a combined total of 1,250 hours of experience in the following related activities:

   (A) Direct supervisor contact.

   (B) Client centered advocacy.
(C) Not more than 250 hours of experience administering tests and evaluating psychological tests of clients, writing clinical reports, writing progress notes, or writing process notes.

(D) Not more than 250 hours of verified attendance at workshops, training sessions, or conferences directly related to professional clinical counseling that are approved by the applicant's supervisor.

(c) No hours of clinical mental health experience may be gained more than six years prior to the date the application for examination eligibility was filed.

(d) An applicant shall register with the board as an intern in order to be credited for postdegree hours of experience toward licensure. Postdegree hours of experience shall be credited toward licensure, provided that the applicant applies for intern registration within 90 days of the granting of the qualifying degree and is registered as an intern by the board. Postdegree experience shall not be gained until the applicant has been registered as a professional clinical counselor intern.

(e) All applicants and interns shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of professional clinical counseling.

(f) Experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Experience obtained under the supervision of a supervisor with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(g) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.

(1) No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(2) An intern shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons in segments lasting no less than one continuous hour.

(4) Notwithstanding paragraph (3), an intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable, may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.
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Existing Law:

1) Provides for the licensure of marriage and family therapists, clinical social workers, educational psychologists, and professional clinical counselors. (Business and Professions Code (BPC) §§4980, 4989.50, 4996, 4999.30)

2) Provides that the application of marriage and family therapy principals and methods includes, but is not limited to, the use of applied psychotherapeutic techniques to enable individuals to mature and grow within marriage and the family, the provision of explanations and interpretations of the psychosexual and psychosocial aspects of relationships, and the use, application, and integration of the training and coursework required for licensure. (BPC §4980.02)

3) States the practice of clinical social work includes counseling and using applied psychotherapy of a non medical nature with individuals, families, or groups. (BPC §4996.9).

4) States that professional clinical counseling focuses exclusively on the application of counseling interventions and psychotherapeutic techniques for the purposes of improving mental health. (BPC §4999.20)

5) Includes the following in the list of professionals to be considered as a psychotherapist (Evidence Code §1010):

   a) A licensed clinical social worker;
   b) A licensed marriage and family therapist;
   c) A marriage and family therapist intern;
   d) An associate clinical social worker;
   e) A marriage and family therapist trainee;
   f) A licensed professional clinical counselor;
   g) A clinical counselor intern; and
   h) A clinical counselor trainee.
This Bill:

1) Prohibits a psychotherapist from engaging in sexual orientation change efforts without first obtaining the patient's informed consent. (BPC §865.1(a))

2) Requires the informed consent to be a form signed by the patient, and to include the following statement (BPC §865.1(b)):

"Having a lesbian, gay, or bisexual sexual orientation is not a mental disorder. Sexual orientation change efforts have not been shown to be safe or effective and can, in fact, be harmful. The risks include, but are not limited to, depression, anxiety, self-destructive behavior, and suicide.

The American Psychological Association convened a Task Force on Appropriate Therapeutic Responses to Sexual Orientation and it concluded:

"Efforts to change sexual orientation are unlikely to be successful and involve some risk of harm, contrary to the claims of sexual orientation change efforts practitioners and advocates."

The American Academy of Pediatrics states:

"Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation."

The American Medical Association's Council on Scientific Affairs prepared a report in which it stated:

"Aversion therapy (a behavioral or medical intervention which pairs unwanted behavior, in this case, homosexual behavior, with unpleasant sensations or aversive consequences) is no longer recommended for gay men and lesbians. Through psychotherapy, gay men and lesbians can become comfortable with their sexual orientation and understand the societal response to it."

The National Association of Social Workers states:

"Social stigmatization of lesbian, gay and bisexual people is widespread and is a primary motivating factor in leading some people to seek sexual orientation changes. Sexual orientation conversion therapies assume that homosexual orientation is both pathological and freely chosen. No data demonstrates that reparative or conversion therapies are effective, and, in fact, they may be harmful."

3) Prohibits a patient under 18 from undergoing sexual orientation change efforts. (BPC §865.2(a))

4) States that giving informed consent does not waive the right to refuse sexual orientation change efforts, and states that consent may be withdrawn at any point prior to, during, or between sessions. (BPC §865.2(b))

5) States that any act of coercion by any person or facility invalidates the patient's consent. (BPC §865.2(c))
6) Allows a cause of action to be brought against a psychotherapist if sexual orientation change efforts were performed under the following circumstances (BPC §865.3(a)(1):
   a. Informed consent was not obtained prior to beginning the sexual orientation change efforts;
   b. Informed consent was obtained via therapeutic deception; or
   c. The sexual orientation change efforts were performed on a patient under 18.

7) Allows damages to be recovered in the amount of $5,000, or actual damages, whichever is greater. (BPC §865.3(a)(2))

8) Defines the time limit to begin a cause of action as the following (BPC §865.3(a)(3)):
   a. Within eight years of the patient turning 18; or
   b. Within five years of discovery that sexual orientation change efforts were performed in violation of the law.

9) Defines “informed consent” as consent that is voluntarily provided in writing by a patient to a psychotherapist with whom the patient has a therapeutic relationship. The consent must explicitly state the patient agrees to the sexual orientation change efforts an must include the statement outlined in Item 2 above. (BPC §865(a))

10) States that consent that is provided as a result of therapeutic deception, duress, or coercion is not informed consent. (BPC §865(a))

11) Defines “sexual orientation change efforts” as psychotherapy aimed at altering sexual or romantic desires, attractions, or conduct of a person toward people of the same sex so that the desire, attraction or conduct is eliminated, reduced, or directed toward people of a different sex. (BPC §865(d))

12) Defines “therapeutic deception” as a representation by a psychotherapist that sexual orientation change efforts are endorsed by leading medical and mental health associations, or that they can or will reduce or eliminate a person’s sexual or romantic desires, attractions, or conduct toward a person of the same sex. (BPC §865(e))

Comments:

1) Author’s Intent. According to the Author’s office, the intent of this bill is twofold:
   a) To provide awareness of the potential harmful effects of sexual orientation change therapies and awareness of alternatives; and
   b) To protect minors from sexual orientation change therapies.

   The author states that “this so-called reparative therapy, conversion therapy, or reorientation therapy is scientifically ineffective and has resulted in much harm.”
2) Support and Opposition.

Support:

Equality California (Sponsor)

Oppose:

The following entities have taken an “oppose unless amended” position:

California Psychological Association
California Association for Licensed Professional Clinical Counselors
California Psychiatric Association
California Association of Marriage and Family Therapists

3) History

2012
Apr. 30 From committee with author's amendments. Read second time and amended. Re-referred to Com. on JUD.
Apr. 25 From committee with author's amendments. Read second time and amended. Re-referred to Com. on JUD.
Apr. 24 From committee: Do pass and re-refer to Com. on JUD. (Ayes 5. Noes 3. Page 3259.) (April 23). Re-referred to Com. on JUD.
Apr. 16 From committee with author's amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.
Apr. 13 Set for hearing April 23.
Apr. 12 Re-referred to Coms. on B., P. & E.D. and JUD.
Apr. 9 From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.
Mar. 1 Referred to Com. on RLS.
Feb. 23 From printer. May be acted upon on or after March 24.
Feb. 22 Introduced. Read first time. To Com. on RLS. for assignment. To print.
SENATE BILL No. 1172

Introduced by Senator Lieu

February 22, 2012

An act to add Article 15 (commencing with Section 865) to Chapter 1 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL’S DIGEST

SB 1172, as amended, Lieu. Sexual orientation change efforts.

Existing law provides for licensing and regulation of various professions in the healing arts, including physicians and surgeons, psychologists, marriage and family therapists, educational psychologists, clinical social workers, and licensed professional clinical counselors.

This bill would prohibit psychotherapists, as defined, from performing sexual orientation change efforts, as defined, in the absence of informed consent of the patient. The bill would require a specified statement to be included on the informed consent form. Informed consent would not be effective for patients under 18 years of age. The bill would provide for a cause of action against psychotherapists by patients, former patients, or certain other persons in specified cases.

The bill would also declare the intent of the Legislature in this regard.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) An individual’s sexual orientation, whether homosexual, bisexual, or heterosexual, is not a disease, disorder, illness, deficiency, or shortcoming. The major professional associations of mental health practitioners and researchers in the United States have recognized this fact for nearly 40 years.

(b) Sexual orientation change efforts can pose critical health risks to lesbian, gay, and bisexual people, including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources. This is documented by the American Psychological Association’s Task Force on Appropriate Therapeutic Responses to Sexual Orientation in its 2009 Report of the Task Force on Appropriate Therapeutic Responses to Sexual Orientation.

(c) Recognizing that there is no evidence that any type of psychotherapy can change a person’s sexual orientation and that sexual orientation change efforts may cause serious and lasting harms, the American Psychiatric Association, the American Psychological Association, the American Counseling Association, the National Association of Social Workers, and the American Academy of Pediatrics uniformly oppose efforts to change the sexual orientation of any individual.

(c) (1) The American Psychological Association, in its 1997 Resolution on Appropriate Therapeutic Responses to Sexual Orientation, states: “We oppose portrayals of lesbian, gay and bisexual youth and adults as mentally ill due to their sexual orientation and support the dissemination of accurate information about sexual orientation and mental health and appropriate interventions in order to counteract bias that is based in ignorance of unfounded beliefs about sexual orientation.”
(2) The American Psychological Association also convened a Task Force on Appropriate Therapeutic Responses to Sexual Orientation. The task force conducted a systematic review of peer-reviewed journal literature on sexual orientation change efforts. It concluded: “Efforts to change sexual orientation are unlikely to be successful and involve some risk of harm, contrary to the claims of sexual orientation change efforts practitioners and advocates.”

(d) The American Psychiatric Association published a position statement in March of 2000 in which it stated: “The American Psychiatric Association opposes any psychiatric treatment such as reparative or conversion therapy which is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that a patient should change his/her sexual homosexual orientation.”

(e) The American School Counselor Association’s position statement on professional school counselors and lesbian, gay, bisexual, transgendered, and questioning (LGBTQ) youth states: “It is not the role of the professional school counselor to attempt to change a student’s sexual orientation/gender identity but instead to provide support to LGBTQ students to promote student achievement and personal well-being. Recognizing that sexual orientation is not an illness and does not require treatment, professional school counselors may provide individual student planning or responsive services to LGBTQ students to promote self-acceptance, deal with social acceptance, understand issues related to coming out, including issues that families may face when a student goes through this process and identify appropriate community resources.”

(f) The American Academy of Pediatrics in 1993 published an article in its journal, Pediatrics, stating: “Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation.”

(g) The American Medical Association’s Council on Scientific Affairs prepared a report in 1994 in which it stated: “Aversion therapy (a behavioral or medical intervention which pairs unwanted behavior, in this case, homosexual behavior, with unpleasant sensations or aversive consequences) is no longer recommended for gay men and lesbians. Through psychotherapy,
gay men and lesbians can become comfortable with their sexual orientation and understand the societal response to it.”

(h) The National Association of Social Workers prepared a 1997 policy statement in which it stated: “Social stigmatization of lesbian, gay and bisexual people is widespread and is a primary motivating factor in leading some people to seek sexual orientation changes. Sexual orientation conversion therapies assume that homosexual orientation is both pathological and freely chosen. No data demonstrates that reparative or conversion therapies are effective, and, in fact, they may be harmful.”

(i) Minors who experience family rejection based on their sexual orientation face especially serious health risks. In one study, lesbian, gay, and bisexual young adults who reported higher levels of family rejection during adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse compared with peers from families that reported no or low levels of family rejection. This is documented by Caitlyn Ryan et al. in their article entitled Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults (2009) 123 Pediatrics.

(j) California has a compelling interest in protecting the lives and health of lesbian, gay, and bisexual people.

SEC. 2. Article 15 (commencing with Section 865) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 15. Sexual Orientation Change Efforts

865. For the purposes of this article, the following terms shall have the following meanings:

(a) “Informed consent” means consent that is voluntarily provided in writing by a patient to a psychotherapist with whom the patient has a therapeutic relationship. The informed consent
must explicitly manifest the patient’s agreement to sexual
orientation change efforts and include a statement as set forth in
Section 865.1. Consent that is provided as a result of therapeutic
deception or duress or coercion is not informed consent.
(b) “Psychotherapist” means a physician and surgeon
specializing in the practice of psychiatry, a psychologist, a
psychological assistant, a marriage and family therapist, a
registered marriage and family therapist, intern, or trainee, an
educational psychologist, a licensed clinical social worker, an
associate clinical social worker, a licensed professional clinical
counselor, or a registered clinical counselor, intern, or trainee.
(c) “Psychotherapy” means the professional assessment,
evaluation, treatment, or counseling of a mental or emotional
illness, symptom, or condition by a psychotherapist.
(d) “Sexual orientation change efforts” means psychotherapy
aimed at altering the sexual or romantic desires, attractions, or
desire, attraction, or conduct of a person toward people of the same sex so that the
instead be directed toward people of a different sex. It does not
include psychotherapy aimed at altering sexual desires, attractions,
with another person without that person’s consent.
(e) “Therapeutic deception” means a representation by a
psychotherapist that sexual orientation change efforts are endorsed
by leading medical and mental health associations or that they can
or will reduce or eliminate a person’s sexual or romantic desires,
attractions, or conduct toward another person of the same sex.
(f) “Therapeutic relationship” means the relationship that exists
during the time the patient receives psychotherapy.
(g) “Leading medical and mental health associations” means
the American Psychiatric Association, the American Psychological
Association, the American Counseling Association, the National
Association of Social Workers, the American Association for
Marriage and Family Therapy, and the American Academy of
Pediatrics.
865.1. (a) No psychotherapist shall engage in sexual orientation
change efforts without first obtaining the patient’s informed consent
to therapy as prescribed in subdivision (b).
(b) To obtain informed consent, a treating psychotherapist shall
provide a patient with a form to be signed by the patient that
provides informed consent. The form shall include the following statement in size 14 font:

“Having a lesbian, gay, or bisexual sexual orientation is not a mental disorder. There is no scientific evidence that any types of therapies are effective in changing a person’s sexual orientation. Sexual orientation change efforts have not been shown to be safe or effective and can, in fact, be harmful. The risks include, but are not limited to, depression, anxiety, and self-destructive behavior, and suicide.

Medical and mental health associations that oppose the use of sexual orientation change efforts include the American Medical Association, the American Psychological Association, the American Psychiatric Association, the National Association of Social Workers, the American Counseling Association, the American Academy of Pediatrics, and the American Association for Marriage and Family Therapy.”

The American Psychological Association convened a Task Force on Appropriate Therapeutic Responses to Sexual Orientation and it concluded:

“Efforts to change sexual orientation are unlikely to be successful and involve some risk of harm, contrary to the claims of sexual orientation change efforts practitioners and advocates.”

The American Academy of Pediatrics states:

“Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation.”

The American Medical Association’s Council on Scientific Affairs prepared a report in which it stated:

“Aversion therapy (a behavioral or medical intervention which pairs unwanted behavior, in this case, homosexual behavior, with unpleasant sensations or aversive consequences) is no longer recommended for gay men and lesbians. Through psychotherapy, gay men and lesbians can become comfortable with their sexual orientation and understand the societal response to it.”

The National Association of Social Workers states:

“Social stigmatization of lesbian, gay and bisexual people is widespread and is a primary motivating factor in leading some people to seek sexual orientation changes. Sexual orientation conversion therapies assume that homosexual orientation is both
pathological and freely chosen. No data demonstrates that reparative or conversion therapies are effective, and, in fact, they may be harmful.”

865.2. (a) Under no circumstances shall a patient under 18 years of age undergo sexual orientation change efforts, regardless of the willingness of a patient’s parent, guardian, conservator, or other person to authorize such efforts.

(b) The right to refuse sexual orientation change efforts is not waived by giving informed consent and that consent may be withdrawn at any time prior to, during, or between sessions of sexual orientation change efforts.

(c) Any act of duress or coerion by any person or facility shall invalidate the patient’s consent to sexual orientation change efforts.

865.3. (a) (1) A cause of action may be brought against a psychotherapist by a patient, former patient, or deceased former patient’s parent, child, or sibling if the sexual orientation change efforts were conducted without first obtaining informed consent or by means of therapeutic deception, or if the sexual orientation change efforts were conducted on a patient who was under 18 years of age at any point during the use of the sexual orientation change efforts.

(2) The patient, former patient, or deceased former patient’s parent, child, or sibling may recover actual damages, or statutory damages in the amount of five thousand dollars ($5,000), whichever is greater, in addition to costs and reasonable attorney’s fees.

(3) The time for commencement of the action shall be within eight years of the date the patient or former patient attains the age of majority or within five years of the date the patient, former patient, or deceased former patient’s parent, child, or sibling discovers or reasonably should have discovered that the patient was subjected to sexual orientation change efforts in violation of this article.

(b) Nothing in this article precludes or limits the right of a patient, former patient, or deceased former patient’s parent, child, or sibling to bring a civil action against a psychotherapist arising from other legal claims.
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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES
BILL ANALYSIS


AUTHOR: LOGUE SPONSOR: CALIFORNIA STATE RURAL HEALTH ASSOCIATION

RECOMMENDED POSITION: NONE

SUBJECT: LICENSURE AND CERTIFICATION REQUIREMENTS: MILITARY EXPERIENCE

Existing Law:

1) Requires healing arts boards under the Department of Consumer Affairs (DCA) to provide methods of evaluating education, training, and experience obtained in military service if the training is applicable to the requirements of the profession. (Business and Professions Code (BPC) §710)

2) Requires an applicant for licensure as a clinical social worker to have a master’s degree from an accredited school of social work. (BPC §4996.2(b))

3) Defines an accredited school of social work as a school that is accredited by the Commission on Accreditation of the Council on Social Work Education. (BPC §4991.2)

4) Requires an applicant for licensure as a marriage and family therapist to have a specified doctoral or master’s degree from one of the following types of school, college, or universities (BPC §§4980.40, 4980.40.5):
   a. Accredited by a regional accrediting agency recognized by the United States Department of Education;
   b. Approved by the Bureau for Private Postsecondary Education; or
   c. Accredited by any of the following:
      i. Northwest Commission on Colleges and Universities;
      ii. Middle States Association of Colleges and Secondary Schools;
      iii. New England Association of Schools and Colleges;
      iv. North Central Association of Colleges and Secondary Schools; or
      v. Southern Association of Colleges and Schools.

5) Requires an applicant for licensure as a professional clinical counselor to have a master’s or doctoral degree with specified content, obtained from one of the following (BPC §§4999.12(a),(b), 4999.32(b), 4999.33(b)):
a. A school, college or university accredited by the Western Association of Schools and Colleges, or its equivalent regional accrediting institution; or

b. A school, college or university that possessed unconditional approval by the Bureau for Private Postsecondary Education at the time of the applicant's graduation from the school, college or university.

This Bill:

1) Requires a board to accept education, training, and experience gained in the military toward licensing requirements unless the board determines that the education, training, and experience is not substantially equivalent to those licensing requirements. (BPC §712(a))

2) As of July 1, 2014, requires a board that accredits or approves schools offering education course credits toward licensing requirements to require schools seeking accreditation or approval to have procedures in place to fully accept an applicant's military education, training and experience toward completion of an educational program designed to qualify a person for licensure. (BPC §712(b))

3) Requires a board to determine whether or not it is necessary to adopt regulations to implement this new requirement, and if it is deemed necessary, to adopt the regulations by January 1, 2014. (BPC §712(c))

4) Requires the Department of Veterans Affairs to provide technical assistance to boards in determining substantial equivalency of education, training, and experience. (BPC §712(d))

Comment:

1) Intent. This bill is part of a larger federal effort to improve the lives of military families. The bill’s author notes that lack of health care providers is a significant barrier to access to health care services in underserved areas. Post 9/11 veterans of the military have an unemployment rate of 13.3 percent, but have often gained education, training, and experience in their military service that can be transferred to a licensed profession.

2) Current Board Procedure. The Board has very specific requirements for education and experience in its licensing laws. Currently, if an applicant for licensure or registration had military education and experience, the Board conducts a review to determine whether or not it was substantially equivalent to current licensing requirements. This would be done on a case by case basis, depending on the specific characteristics of the individual's education and experience.

The Board is not aware of specific circumstances in which an individual had military education or experience. This is not tracked by the Board and there is not a common provider of military education or experience that the Board sees cited on incoming applications. Occasionally, the Board sees supervised experience that was obtained out of the country. This experience may be accepted by the Board if the Board can determine that the supervision was substantially equivalent, and upon verification that the supervisor is an equivalently licensed acceptable professional who has been licensed at least two years in his or her current jurisdiction and is in good standing.

3) Behavioral Health Professionals in the Military. The U.S. Army Medical Service Corps lists two types of behavioral health job descriptions on its web site.
a) **Social Workers:** According to the web site, “army social workers practice within a broad spectrum of practice areas and settings that include: medical inpatient and outpatient treatment, mental health, family advocacy, combat stress, substance abuse, program management and prevention and primary care. The Army Medical Service Corps offers you significant opportunities to expand into areas beyond your traditional clinical roles, including research, teaching, and administration.”

Appointment as a social worker requires a master’s degree in social work with emphasis in clinical practice from a program accredited by the Council on Social Work Education. The social worker must also have a state license in social work that allows clinical independent practice.

b) **Clinical Psychologist:** The web site states that “army clinical psychology officers provide a full range of psychological services to Soldiers, family members and military retirees. Assignment options include major medical centers, community hospitals and clinics.

Appointment as a clinical psychologist requires a doctorate in clinical or counseling psychology, a clinical psychology internship at an APA accredited program, and an unrestricted license to practice clinical or counseling psychology in the U.S.

Aside from utilizing social workers or clinical psychologists who are already state-licensed, it is unclear if the military offers any training programs to those seeking licensure as a psychotherapist. The Board has not been made aware of any such programs. If such a program were presented to the Board, it would be evaluated to see if the education and experience gained meet licensing requirements.

4) **Effect on Board.** The Board does not accredit or approve schools offering education course credit. Instead, it relies on the accreditations and approvals of other specified entities. Therefore, the main provisions of this bill, as written, would not apply to the Board. However, the Board would need to submit a report to the Governor and the Legislature explaining why the regulations required by this bill are not necessary.

5) **Related Legislation.** AB 1932 (Gorell) requires healing arts boards to annually issue a written report to the Department of Veteran’s Affairs and the Legislature that details the board’s methods of evaluating education, training and experience gained in the military, and whether that education, training and experience can be applied toward the board’s licensing requirements.

6) **Support and Opposition.**

   **Support:**
   - California State Rural Health Association (sponsor)
   - American Legion, Department of California
   - AMVETS, Department of California
   - California Association of County Veteran Service Officers
   - California State Commanders Veterans Council
   - Vietnam Veterans of America, California State Council

   **Opposition:**
   - None on file.

7) **History**

2012
Apr. 25 From committee: Do pass and re-refer to Com. on APPR. (Ayes 8.
Noes 0.) (April 24). Re-referred to Com. on APPR.

Apr. 18 From committee: Do pass and re-refer to Com. on V.A. (Ayes 8. Noes
0.) (April 17). Re-referred to Com. on V.A.

Apr. 12 Re-referred to Com. on B., P. & C.P.

Apr. 11 From committee chair, with author's amendments: Amend, and re-refer
to Com. on B., P. & C.P. Read second time and amended.

Apr. 9 Re-referred to Com. on B., P. & C.P.

Mar. 29 Referred to Coms. on B., P. & C.P. and V.A. From committee chair,
with author's amendments: Amend, and re-refer to Com. on B., P. &
C.P. Read second time and amended.

Feb. 24 From printer. May be heard in committee March 25.

Feb. 23 Read first time. To print.
An act to add Section 712 to the Business and Professions Code, and to add Section 131136 to the Health and Safety Code, relating to professions and vocations.

LEGISLATIVE COUNSEL’S DIGEST

AB 1976, as amended, Logue. Professions and vocations: licensure and certification requirements: military experience.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Existing law requires the rules and regulations of these healing arts boards to provide for methods of evaluating education, training, and experience obtained in military service if such training is applicable to the requirements of the particular profession or vocation regulated by the board. Under existing law, specified other healing arts professions are licensed or certified and regulated by the State Department of Public Health. In some instances, a board with the Department of Consumer Affairs or the State Department of Public Health approves schools offering educational course credit for meeting licensing or certification qualifications and requirements.
This bill would require a healing arts board within the Department of Consumer Affairs and the State Department of Public Health, upon the presentation of evidence by an applicant for licensure or certification, to, except as specified, accept education, training, and practical experience completed by an applicant in military service toward the qualifications and requirements to receive a license or certificate. If a board or the State Department of Public Health accredits or otherwise approves schools offering educational course credit for meeting licensing and certification qualifications and requirements, the bill would, not later than July 1, 2014, require a board or the State Department of Public Health to accredit or otherwise approve only those schools that seeking accreditation or approval to have procedures in place to accept an applicant’s military education, training, and practical experience toward the completion of an educational program that would qualify a person to apply for licensure or certification. The bill would require each board and the State Department of Public Health to determine whether it is necessary to adopt regulations to implement these provisions and if so, would require those regulations to be adopted not later than January 1, 2014. If a board or the State Department of Public Health determines that such regulations are not necessary, the bill would require a report with an explanation regarding that determination to be submitted to the Governor and the Legislature not later than January 1, 2014. The bill would require the Director of Consumer Affairs and the State Department of Public Health, by January 1, 2016, to submit to the Governor and the Legislature a written report on the progress of the boards and the department in complying with these provisions.

Existing law, the Administrative Procedure Act, sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies. The act may not be superseded or modified by any subsequent legislation except to the extent that the legislation does so expressly.

This bill would require each healing arts board within the Department of Consumer Affairs and the State Department of Public Health to adopt emergency regulations pursuant to specified procedures to carry out these provisions.

Under existing law, the Department of Veterans Affairs has specified powers and duties relating to various programs serving veterans.

With respect to complying with the bill’s requirements and obtaining specified funds to support compliance with these provisions, this bill would require the Department of Veterans Affairs to provide technical
assistance to the healing arts boards within the Department of Consumer Affairs, the Director of Consumer Affairs, and the State Department of Public Health.

State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited, as the Veterans Health Care Workforce Act of 2012.

SEC. 2. (a) The Legislature finds and declares all of the following:

(1) Lack of health care providers continues to be a significant barrier to access to health care services in medically underserved urban and rural areas of California.

(2) Veterans of the United States Armed Forces and the California National Guard gain invaluable education, training, and practical experience through their military service.

(3) According to the federal Department of Defense, as of June 2011, one million veterans were unemployed nationally and the jobless rate for post-9/11 veterans was 13.3 percent, with young male veterans 18 to 24 years of age experiencing an unemployment rate of 21.9 percent.

(4) According to the federal Department of Defense, during the 2011 federal fiscal year, 8,854 enlisted service members with medical classifications separated from active duty.

(5) According to the federal Department of Defense, during the 2011 federal fiscal year, 16,777 service members who separated from active duty listed California as their state of residence.

(6) It is critical, both to veterans seeking to transition to civilian health care professions and to patients living in underserved urban and rural areas of California, that the Legislature ensures that veteran applicants to boards within the Department of Consumer Affairs or the State Department of Public Health for licensure are expedited through the qualifications and requirements process.

(b) It is the intent of the Legislature to ensure that boards within the Department of Consumer Affairs or and the State Department of Public Health and schools offering educational course credit for meeting licensing qualifications and requirements fully and
expeditiously recognize and provide credit for an applicant’s military education, training, and practical experience.

SEC. 3. Section 712 is added to the Business and Professions Code, to read:

712. (a) Notwithstanding any other provision of law, a board described in this division shall, upon the presentation of satisfactory evidence by an applicant for licensure, accept the education, training, and practical experience completed by an applicant as a member of the United States Armed Forces or Military Reserves of the United States, the national guard of any state, the military reserves of any state, or the naval militia of any state, toward the qualifications and requirements to receive a license issued by that board unless the board determines that the education, training, or practical experience is not substantially equivalent to the standards of the board.

(b) Not later than July 1, 2014, if a board described in this division accredits or otherwise approves schools offering educational course credit for meeting licensing qualifications and requirements, the board shall only accredit or otherwise approve those schools that seeking accreditation or approval to have procedures in place to fully accept an applicant’s military education, training, and practical experience toward the completion of an educational program that would qualify a person to apply for licensure.

(c) (1) Each board described in this division shall determine whether it is necessary to adopt regulations to implement this section. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and each board is hereby exempted for this purpose from the requirements of subdivision (b) of Section 11346.1 of the Government Code.

(2) If a board determines it is necessary to adopt regulations, the board shall adopt those regulations not later than January 1, 2014.

(3) If a board determines it is not necessary to adopt regulations, the board shall, not later than January 1, 2014, submit to the Governor and the Legislature a written report explaining why such regulations are not necessary. This paragraph shall become inoperative on January 1, 2017.
(d) With respect to complying with the requirements of this section including the determination of substantial equivalency between the education, training, or practical experience of an applicant and the board’s standards, and obtaining state, federal, or private funds to support compliance with this section, the Department of Veterans Affairs shall provide technical assistance to the boards described in this division and to the director.

(e) (1) On or before January 1, 2016, the director shall submit to the Governor and the Legislature a written report on the progress of the boards described in this division toward compliance with this section.

(2) This subdivision shall become inoperative on January 1, 2017.

(f) A report to the Legislature pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(g) This section shall become inoperative on January 1, 2017.

SEC. 4. Section 131136 is added to the Health and Safety Code, to read:

131136. (a) Notwithstanding any other provision of law, the department shall, upon the presentation of satisfactory evidence by an applicant for licensure or certification in one of the professions described in subdivision (b), accept the education, training, and practical experience completed by an applicant as a member of the United States Armed Forces or Military Reserves of the United States, the national guard of any state, the military reserves of any state, or the naval militia of any state, toward the qualifications and requirements to receive a license issued by the department unless the department determines that the education, training, or practical experience is not substantially equivalent to the standards of the department.

(b) The following professions are applicable to this section:

(1) Medical laboratory technician as described in Section 1260.3 of the Business and Professions Code.

(2) Clinical laboratory scientist as described in Section 1262 of the Business and Professions Code.

(3) Radiologic technologist as described in Chapter 6 (commencing with Section 114840) of Part 9 of Division 104.

(4) Nuclear medicine technologist as described in Chapter 4 (commencing with Section 107150) of Part 1 of Division 104.
(5) Certified nurse assistant as described in Article 9 (commencing with Section 1337) of Chapter 2 of Division 2.

(6) Certified home health aide as described in Section 1736.1.

(7) Certified hemodialysis technician as described in Article 3.5 (commencing with Section 1247) of Chapter 3 of Division 2 of the Business and Professions Code.

(8) Nursing home administrator as described in Chapter 2.35 (commencing with Section 1416) of Division 2.

(c) Not later than July 1, 2014, if the department accredits or otherwise approves schools offering educational course credit for meeting licensing and certification qualifications and requirements, the department shall only accredit or otherwise approve require those schools that seeking accreditation or approval to have procedures in place to fully accept an applicant’s military education, training, and practical experience toward the completion of an educational program that would qualify a person to apply for licensure or certification.

(d) With respect to complying with the requirements of this section, the (1) Not later than January 1, 2014, the department shall determine whether it is necessary to adopt regulations to implement this section. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted for this purpose from the requirements of subdivision (b) of Section 11346.1 of the Government Code.

(2) If the department determines it is necessary to adopt regulations, the department shall adopt those regulations not later than January 1, 2014.

(3) If the department determines it is not necessary to adopt regulations, the department shall, not later than January 1, 2014, submit to the Governor and the Legislature a written report explaining why such regulations are not necessary. This paragraph shall become inoperative on January 1, 2017.

(e) With respect to complying with the requirements of this section including the determination of substantial equivalency between the education, training, or practical experience of an applicant and the department’s standards, and obtaining state, federal, or private funds to support compliance with this section,
the Department of Veterans Affairs shall provide technical
assistance to the department and to the State Public Health Officer.

(f) (1) On or before January 1, 2016, the department shall
submit to the Governor and the Legislature a written report on the
department’s progress toward compliance with this section.
(2) This subdivision shall become inoperative on January 1,
2017.

(g) A report to the Legislature pursuant to this section shall be
submitted in compliance with Section 9795 of the Government
Code.
(h) This section shall become inoperative on January 1, 2017.
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To: Board Members  
From: Kim Madsen  
Executive Officer  
Subject: Exam Restructure  

Date: May 2, 2012  
Telephone: 916-574-7841

This item will be provided as a supplemental item.
To: Board Members  
From: Kim Madsen  
Executive Officer  

Subject: Implementation of SB 1441, Chapter 548, Statutes 2008, and SB 1172, Chapter 517, Statutes of 2010 Uniform Standards for Substance Abusing Licensees

Background

Senate Bill 1441 (Ridley-Thomas) Statutes of 2008, Chapter 548, was signed in September 2008. The bill required the Department of Consumer Affairs (DCA) to establish the Substance Abuse Coordination Committee (SACC). The SACC, comprised of the executive officers of the DCA’s healing arts boards, was tasked with formulating, by January 1, 2010, uniform and specific standards in specified areas that each board would be required to use in dealing with substance abusing licensees.

The goal of this process was to create consistent and uniform standards which healing arts boards would adopt through regulation, allowing consumers better and more consistent protection from substance abusing licensees.

November 9-10, 2011 Board Meeting

The Board considered proposed regulations to implement the Uniform Standards at the November 2011 Board meeting. Board counsel Michael Santiago reported on the legal opinion on SB 1441 provided by the Legislative Counsel. This legal opinion attempted to address two issues:

1. Was the Substance Abuse Committee (Committee) required to adopt the Uniform Standards pursuant to the rulemaking procedures under the Administrative Procedure Act? According to the Legislative Counsel, the Committee should have gone through the regulatory process, rather than directing each individual board to draft its own regulations.

2. Are the healing arts boards required to implement the Uniform Standards? According to the Legislative Counsel, it is mandatory for the healing arts boards to implement the standards that the Committee set forth.

These questions raise some issues for the Board to consider:

- If this Committee reconvenes, will it propose regulations?
- If the Committee reconvenes and goes through the rulemaking process to implement regulations for the standards, what if there is a conflict with to the Board’s standards?
Taking into account that the Board is required to implement the standards; must all the standards be applied to an abusing licensee? Does the Board have discretion which of those standards it can apply to the abusing licensee?

Mr. Santiago outlined the Board’s options. The Board could choose to move forward with rulemaking package provided by staff, or the Board could choose to ask DCA for further guidance. Following discussion the Board members voted to direct staff to seek guidance from DCA.

Update

On April 5, 2012, the Board received a memo from the Department of Consumer Affairs (DCA) Legal Affairs office addressed to all healing arts boards regarding the rulemaking process to implement the Uniform Standards. DCA acknowledged that questions have been raised concerning the Board’s discretion to implement the Uniform Standards, and concerning whether or not the Substance Abuse Coordination Committee (SACC) was the entity with the rulemaking authority over the Uniform Standards to be used by the healing arts boards. These questions emerged following receipt of the Legislative Counsel Bureau’s (Legislative Counsel) opinion on the matter.

DCA requested the Office of the Attorney General review the Legislative Counsel’s opinion. On February 29, 2012 an informal legal opinion was rendered by the Government Law Section of the Office of the Attorney General which addresses the discretion of the boards in adopting the Uniform Standards. DCA indicated that both the Legislative Counsel and the Attorney General concluded that the healing arts boards do not have the discretion to modify the content of the specific terms or conditions that make up the Uniform Standards. Nor do the healing arts boards have the discretion to determine which of the Uniform Standards apply in a particular case. DCA concurs with these opinions.

The Legislative Counsel and the Attorney General offer differing opinions as to whether or not the SACC has the authority to promulgate regulations to implement the Uniform Standards. The Legislative Counsel concluded the SACC has the authority to promulgate regulations mandating that the boards implement the Uniform Standards.

However, the Attorney General disagreed with the Legislative Counsel, stating that the SACC was not vested with the authority to implement the Uniform Standards. This authority lies with the individual boards. DCA shares the opinion of the Attorney General. DCA recommends that healing arts boards move forward as soon as possible to implement the Uniform Standards.

DCA suggested that the boards work with their assigned legal counsel to determine how best to implement the Uniform Standards. Each Board should determine the following:

1. If the Uniform Standards should be placed in a regulation separate from the disciplinary guidelines; and
2. A definition or criteria to determine what constitutes a “substance-abusing licensee”, which should be included in the proposed regulations.

Status of Proposed Regulations

Board staff drafted proposed regulations which were presented at the November 9-10, 2011 Board meeting. Currently, standards 13 through 16 were not incorporated. These standards involve either diversion programs, which the Board does not have, or data collection, which is an internal Board function not appropriately addressed through regulations. Additionally, the regulations do not define the term “substance-abusing licensee”.

Recommendation

Conduct an open discussion regarding incorporating the Uniform Standards related to substance abuse into Board regulations and the Disciplinary Guidelines. Direct staff to do the following:

- Work with Board counsel to review the proposed regulations and determine if appropriate standards are included;
- Direct staff to work with Board counsel to develop a definition or criteria determining what constitutes a "substance-abusing licensee";
- Direct staff to submit the proposed regulations to DCA Legal Division for review; and
- Direct staff to make any changes required by DCA Legal Division, and submit to the Board for review.

Attachments:

A. Proposed revisions to CCR Sections 1888 and Disciplinary Guidelines, as presented at the November 9, 2011 Board meeting

B. Department of Justice Opinion

C. Legislative Counsel Opinion

D. DCA Legal Affairs Opinion

E. Uniform Standards Regarding Substance Abusing Healing Arts Licensees – Report Prepared by DCA Substance Abuse Coordination Committee, April 2011

F. SB 1441 Text

G. SB 1172 Text
Amend section 1888 in Division 18 of Title 16 of the California Code of Regulations to read as follows:

§1888. UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board of Behavioral Sciences shall consider the disciplinary guidelines entitled “Board of Behavioral Sciences comply with the Uniform Standards Related to Substance Abuse and consider the Disciplinary Guidelines” [Rev. March 2010 October 2011] which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards apply to a substance abusing licensee.

(a) Notwithstanding subsection (b), deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

(b) If the conduct found to be a violation involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. If the licensee does not rebut that presumption, then the Uniform Standards for a substance abusing licensee shall apply unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.

Note: Authority cited: Sections 4980.60, 4987, and 4990.20, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 480, 4982, 4986.70, 4992.3, and 4999.90, Business and Professions Code; and Sections 11400.20, and 11425.50(e), Government Code.
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INTRODUCTION

The Board of Behavioral Sciences (hereinafter “the Board”) is a consumer protection agency with the primary mission of protecting consumers by establishing and maintaining standards for competent and ethical behavior by the professionals under its jurisdiction. In keeping with its mandate, the Board has adopted the following uniform standards related to substance abuse and recommended guidelines for the intended use of those involved in the disciplinary process: Administrative Law Judges, respondents and attorneys involved in the discipline process, as well as Board members who review proposed decisions and stipulations and make final decisions.

These guidelines consist of two-four parts:

I. Uniform Standards Related to Substance Abuse - for those licensees and registrants who test positive for a controlled substance or whose license or registration is on probation due to a substance abuse problem;

II. Penalty Guidelines - an identification of the types of violations and range of penalties, for which discipline may be imposed; (Penalty Guidelines); and

III. Model Disciplinary Orders - language for proposed terms and conditions of probation (Model Disciplinary Orders); and

IV. Board Policies and Guidelines - for various enforcement actions.

The Board expects the penalty imposed to be commensurate with the nature and seriousness of the violation.

These penalty guidelines apply only to the formal disciplinary process and do not apply to other alternatives available to the Board, such as citations and fines. See Business and Professions Code Section 125.9 and Title 16 California Code of Regulations Section 1886.
# TABLE OF CONTENTS

## I. UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE ................................. 4

- Clinical Diagnostic Evaluations ................................................................................. 4
- Clinical Diagnostic Evaluation Report ........................................................................... 4
- Supervisor Requirements ............................................................................................ 5
- Chemical Dependency Support or Recovery Group Meetings .................................... 7
- Major and Minor Violations ....................................................................................... 7
- Positive Test for a Controlled Substance ..................................................................... 8
- Drug Testing Standards .............................................................................................. 9
- Drug Testing Frequency Schedule .......................................................................... 10
- Drug Testing Frequency Schedule Exceptions ....................................................... 11
- Criteria to Petition to Return to Practice ................................................................ 12
- Criteria to Petition for Reinstatement to Unrestricted License or Registration ............ 13

## II. PENALTY GUIDELINES ......................................................................................... 413

- Engaging in Sexual Contact with Client / Former Client ........................................... 514
- Sexual Misconduct ...................................................................................................... 514
- Engaging In Act with a Minor Punishable as a Sexually Related Crime Regardless of Whether the Act Occurred Prior to or After Registration or Licensure ............................... 514
- Commission of an Act Punishable as a Sexually Related Crime ............................. 515
- Impaired Ability to Function Safely Due to Mental illness, Physical Illness, Affecting Competency or Chemical Dependency ................................................................. 615
- Chemical Dependency / Use of Drugs With Client While Performing Services ............ 616
- Intentionally / Recklessly Causing Physical or Emotional Harm to Client ................. 716
- Gross Negligence / Incompetence ............................................................................. 717
- General Unprofessional Conduct ............................................................................... 717
- Failure to Comply with Mandated Reporting Requirements ....................................... 818
- Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee / Registrant ................................................................. 818
- Commission of Dishonest, Corrupt, or Fraudulent Act Substantially Related to Qualifications, Duties and Functions of License .................................................... 919
- Performing, Representing Able to Perform, Offering to Perform, Permitting Trainee or Intern to Perform Beyond Scope of License / Competence ........................................... 919
- Discipline by Another State or Governmental Agency ............................................... 919
- Securing or Attempting to Secure a License by Fraud ............................................... 920
- Misrepresentation of License / Qualifications ......................................................... 1020
I. VARIOUS VIOLATIONS

- Violates Exam Security / Subversion of Licensing Exam ................................................. 10
- Impersonating Licensee / Allowing Impersonation .......................................................... 10
- Aiding and Abetting Unlicensed / Unregistered Activity ................................................... 10
- Failure to Maintain Confidentiality .................................................................................... 10
- Failure to Provide Sexual Misconduct Brochure .............................................................. 10
- Improper Supervision of Trainee / Intern / Associate / Supervisee ................................... 10
- Violations of the Chapter or Regulations by Licensees or Registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience .................................. 11
- Pay, Accept, Solicit Fee for Referrals .............................................................................. 11
- Failure to Disclose Fees in Advance ............................................................................... 11
- False / Misleading / Deceptive / Improper Advertising ..................................................... 12
- Failure to Keep Records Consistent with Sound Clinical Judgment ................................. 12
- Willful Failure to Comply Clients Access to Mental Health Records ................................. 14
- Failure to Comply with Section 2290.5 (Telemedicine) ................................................... 14

II. MODEL DISCIPLINARY ORDERS ............................................................................. 13

- Optional Terms and Conditions of Probation ................................................................. 13
- Standard Terms and Conditions of Probation ................................................................ 20

III. BOARD POLICIES AND GUIDELINES ........................................................................ 25

- Accusations ..................................................................................................................... 25
- Statement of Issues......................................................................................................... 25
- Stipulated Settlements .................................................................................................... 25
- Recommended Language for License Surrenders .......................................................... 25
- Proposed Decisions ........................................................................................................ 26
- Reinstatement/Reduction of Penalty Hearings ............................................................... 26
I. Uniform Standards Related to Substance Abuse

Uniform Standards For Licensees Or Registrants Whose License Or Registration Is On Probation Due To A Substance Abuse Problem

The following standards shall be adhered to in all cases in which a license or registration is placed on probation due, in part, to a substance abuse problem. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions if necessary to protect the public. Whether individual conditions are ordered, however, is within the discretion of the Board.

Clinical Diagnostic Evaluations

Whenever a licensee or registrant is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Board. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

The following practice restrictions apply to each licensee or registrant who undergoes a clinical diagnostic evaluation:

1. The Board shall suspend the license or registration during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the Board.

2. While awaiting the results of a clinical diagnostic evaluation, the licensee or registrant shall be randomly drug tested at least two (2) times per week.

Clinical Diagnostic Evaluation Report

The clinical diagnostic evaluation report shall set forth, in the evaluator’s opinion, whether the licensee or registrant has a substance abuse problem, whether the licensee or registrant is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice, restrictions, or other recommendations related to the licensee or registrant’s rehabilitation and safe practice.

The evaluator shall not have a financial, personal, business or professional relationship with the licensee or registrant. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee or registrant is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.
For all evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 calendar days.

The Board shall review the clinical diagnostic evaluation to determine whether or not the licensee or registrant is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee or registrant based on the application of the following criteria:

1. License or registration type;
2. Licensee or registrant’s history;
3. Documented length of sobriety;
4. Scope and pattern of substance abuse;
5. Treatment history;
6. Medical history;
7. Current medical condition;
8. Nature, duration and severity of substance abuse problem; and
9. Whether the licensee or registrant is a threat to himself or herself or others.

After reviewing the results of the clinical diagnostic evaluation, and the criteria listed above, the Board shall determine whether or not the licensee or registrant is safe to return to practice.

No licensee or registrant shall be returned to practice until he or she has at least 30 calendar days of negative drug tests.

When determining if the licensee or registrant should be required to participate in inpatient, outpatient, or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license or registration type, licensee or registrant’s history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee or registrant is a threat to himself or herself or others.

Supervisor Requirements

If the Board determines that a supervisor is necessary for a particular licensee or registrant, the supervisor must meet the following requirements to be considered for approval by the Board:

1. The supervisor shall not have a current or former financial, personal, business or professional relationship with the licensee or registrant, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee or registrant’s employer to serve as the supervisor, this requirement may be waived by the Board.
Board; however, under no circumstances shall a licensee or registrant’s supervisor be an employee or supervisee of the licensee or registrant.

2. The supervisor’s license scope of practice shall include the scope of practice of the licensee or registrant who is being monitored or be another health care professional if no monitor with like scope of practice is available.

3. The supervisor shall be a current California licensed practitioner and have an active unrestricted license, with no disciplinary action within the last five (5) years.

4. The supervisor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee or registrant’s disciplinary order and agrees to monitor the licensee or registrant as set forth by the Board.

The supervisor must adhere to the following required methods of monitoring the licensee or registrant:

1. Have a face-to-face contact with the licensee or registrant in the work environment on as frequent a basis as determined by the Board, but at least once per week.

2. Interview other staff in the office regarding the licensee or registrant’s behavior, if applicable.

3. Review the licensee or registrant’s work attendance.

Reporting by the supervisor to the Board shall be as follows:

1. Any suspected substance abuse must be orally reported to the Board and the licensee or registrant’s employer within one (1) business day of occurrence. If the occurrence is not during the Board’s normal business hours, the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

2. The supervisor shall complete and submit a written report directly to the Board monthly or as directed by the Board. The report shall include:
   a. the licensee or registrant’s name;
   b. license or registration number;
   c. supervisor’s name and signature;
   d. supervisor’s license number;
   e. worksite location(s);
   f. dates licensee or registrant had face-to-face contact with monitor;
   g. worksite staff interviewed, if applicable;
   h. attendance report;
i. any change in behavior and/or personal habits; and

j. any indicators that can lead to suspected substance abuse.

The licensee or registrant shall complete the required consent forms and sign an agreement with the supervisor and the Board to allow the Board to communicate with the supervisor.

**Chemical Dependency Support or Recovery Group Meetings**

If the Board requires a licensee or registrant to participate in chemical dependency support or recovery group meetings, the Board shall take the following into consideration when determining the frequency of required group meeting attendance:

1. the licensee or registrant’s history;
2. the documented length of sobriety;
3. the recommendation of the clinical diagnostic evaluator;
4. the scope and pattern of substance abuse;
5. the licensee or registrant’s treatment history; and
6. the nature, duration, and severity of substance abuse.

The group meeting facilitator of a chemical dependency support or recovery group that a Board licensee or registrant is required to participate in must meet the following requirements:

1. Have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
2. Be licensed or certified by the state or other nationally certified organizations to provide substance abuse recovery services;
3. Does not have a financial, personal, business or professional relationship with the licensee or registrant within the last year;
4. Must provide the Board a signed document showing the licensee or registrant’s name, the group name, the date and location of the meeting, the licensee or registrant’s attendance, and the licensee or registrant’s level of participation and progress.
5. Must report to the Board any unexcused absence of a Board licensee or registrant being required to participate within 24 hours.

**Major and Minor Violations**

Major violations include, but are not limited to, the following:

1. Failure to complete any Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing more than one minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to obtain drug and alcohol testing for substance abuse when ordered;
7. Testing positive for a controlled substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee or registrant commits a major violation, the Board shall automatically suspend the license or registration and refer the matter for disciplinary action or other action as determined by the Board.

The consequences for a major violation include, but are not limited to, the following:

1. License or registration shall be suspended;
2. Licensee or registrant must undergo a new clinical diagnostic evaluation;
3. Licensee or registrant must test negative for at least one month of continuous drug testing before being allowed to resume practice;
4. Contract or agreement previously made with the Board shall be terminated; and
5. Licensee or registrant shall be referred for disciplinary action, such as suspension, revocation, or other action determined appropriate by the Board.

Minor violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused attendance at required meetings;
3. Failure to contact a monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or registrant or to the public.

If a licensee or registrant commits a minor violation, the Board shall determine what action is appropriate. The consequences for a minor violation include, but are not limited to, the following:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation and/or testing.

Positive Test for a Controlled Substance

If a licensee or registrant tests positive for a controlled substance, the Board shall do the following:

- Automatically suspend the license or registration;
• Immediately contact the licensee or registrant and inform him or her that his or her license or registration has been suspended and he or she may not practice until the suspension is lifted; and

• Immediately notify the licensee or registrant’s employer that the license or registration has been automatically suspended, and that he or she may not practice until the suspension is lifted.

The Board should do the following, as applicable, to determine whether a positive test for a controlled substance is evidence of prohibited use:

• Consult the specimen collector and the laboratory;
• Communicate with the licensee or registrant and/or treating physician; and
• Communicate with any treatment provider, including a group facilitator.

The Board shall immediately lift the suspension if the positive drug test is not found to be evidence of prohibited use.

Drug Testing Standards

The drug testing standards below shall apply to each licensee or registrant subject to drug testing. At its discretion, the Board may use other testing methods in place of, or to supplement, drug and alcohol testing, if appropriate.

1. Drug testing may be required on any day, including weekends and holidays.

2. Except as directed, the scheduling of drug tests shall be done on a random basis, preferably by a computer program.

3. Licensees or registrants shall be required to make daily contact as directed to determine if drug testing is required.

4. Licensees or registrants shall be drug tested on the date of notification as directed by the Board.

5. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

6. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

7. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

8. Collection of specimens shall be observed.

9. Prior to vacation or absence, alternative drug testing location(s) must be approved by the Board.
10. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

Nothing herein shall limit the Board’s authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code Section 11522 or statutes applicable to the Board that contain different provisions for reinstatement or reduction of penalty.

**Drug Testing Frequency Schedule**

The Board may order a licensee or registrant to drug test at any time. In addition, each licensee or registrant shall be tested randomly according to the following drug testing frequency schedule:

<table>
<thead>
<tr>
<th>Level</th>
<th>Year of Probation</th>
<th>Minimum Range Number of Random Tests</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Year 1</td>
<td>52-104 per year</td>
</tr>
<tr>
<td>II</td>
<td>Years 2 through 5</td>
<td>36-104 per year</td>
</tr>
<tr>
<td>III</td>
<td>After Year 5</td>
<td>Once per month*</td>
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*If no positive drug tests in the previous 5 consecutive years.

The Board may increase the number of random tests required at its discretion. If the Board suspects or finds that a licensee or registrant has violated the prescribed testing program, or finds that a licensee or registrant has committed a major violation, it may re-establish the testing cycle by placing that licensee or registrant at the beginning of Level I. This is in addition to any other disciplinary action.

**Drug Testing Frequency Schedule Exceptions**

The Board may make exceptions to the prescribed drug testing frequency schedule for the following reasons:

1. **Licensee or Registrant Demonstrates Previous Testing and Sobriety**

   The licensee or registrant can demonstrate participation in a treatment or monitoring program which requires random testing, prior to being subject to testing by the Board. In such a case, the Board may give consideration to the previous testing by altering the testing frequency schedule so that it is equivalent to the standard.
2. **Violations Outside of Employment**

   A licensee or registrant whose license or registration is placed on probation for a single conviction or incident, or two convictions or incidents, spanning greater than seven years from each other, where alcohol or drugs were a contributing factor, may bypass Level I and participate in Level II of the testing frequency schedule if the violations did not occur at work or on the way to or from work.

3. **Not Employed in Health Care Field**

   The Board may reduce testing frequency to a minimum of twelve (12) times per year if the licensee or registrant is not practicing or working in any health care field. If reduced testing frequency is established for this reason, and the licensee or registrant returns to practice, the licensee or registrant shall notify and obtain approval from the Board. The licensee or registrant shall then be subject to Level I testing frequency for at least 60 days. If the licensee or registrant had not previously met the Level I frequency standard, the licensee or registrant shall be subject to completing a full year at Level I of the testing frequency schedule. If the licensee or registrant had previously met the Level I frequency standard, the licensee or registrant shall be subject to Level II testing after completing Level I testing for at least 60 days.

4. **Tolling**

   The Board may postpone all testing for any person whose probation is placed in a tolling status if the overall length of the probationary period is also tolled. The licensee or registrant shall notify the Board upon his or her return to California and shall be subject to testing as provided in the testing frequency standard. If the licensee or registrant returns to practice and has not previously met the Level I testing frequency standard, the licensee or registrant shall be subject to completing a full year at Level I of the testing frequency schedule. If the licensee or registrant has previously met the Level I testing frequency standard, then Level II shall be in effect.

5. **Substance Use Disorder Not Diagnosed**

   If a licensee or registrant is not diagnosed with a current substance use disorder, a lesser period of monitoring and toxicology screening may be adopted by the Board. This period may not be less than 24 times per year.
Criteria to Petition to Return to Practice

In order to petition to return to full time practice, a licensee or registrant shall have demonstrated all of the following:

1. Sustained compliance with his or her current recovery program;
2. The ability to practice safely as evidenced by current work site reports, evaluations, and any other information related to his or her substance abuse;
3. Must have at least six (6) months of negative drug screening reports and two (2) positive supervisor reports; and
4. Complete compliance with the other terms and conditions of his or her program.

Criteria to Petition for Reinstatement to Unrestricted License or Registration

In order to petition for reinstatement to a full and unrestricted license or registration, a licensee or registrant shall meet all of the following criteria:

1. Demonstrated sustained compliance with the terms of the disciplinary order (if applicable);
2. Demonstrated successful completion of a rehabilitation program (if required);
3. Demonstration of a consistent and sustained participation of activities that promote and support his or her recovery, including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities;
4. Demonstrated ability to practice safely; and
5. Continuous sobriety for at least three (3) to five (5) years.
II. Penalty Guidelines

The following is an attempt to provide information regarding violations of statutes and regulations under the jurisdiction of the Board of Behavioral Sciences and the appropriate range of penalties for each violation. Each penalty listed is followed in parenthesis by a number, which corresponds with a number under the chapter “Model Disciplinary Orders.” Examples are given for illustrative purposes, but no attempt is made to catalog all possible violations. Optional conditions listed are those the Board deems most appropriate for the particular violation; optional conditions not listed as potential minimum terms, should nonetheless be imposed where appropriate. Except as provided in the Uniform Standards Related to Substance Abuse, the Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations which take into account unique circumstances.

If there are deviations or omissions from the guidelines in formulating a Proposed Decision, the Board requires that the Administrative Law Judge hearing the case include an explanation of the deviations or omissions, including all mitigating factors considered by the Administrative Law Judge in the Proposed Decision so that the circumstances can be better understood by the Board during its review and consideration of the Proposed Decision.
<table>
<thead>
<tr>
<th>Statutes and Regulations</th>
<th>Violation Category</th>
<th>Minimum Penalty</th>
<th>Maximum Penalty</th>
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<tbody>
<tr>
<td><strong>Business and Professions Code:</strong> (B&amp;P)</td>
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<tr>
<td><strong>Title 16, California Code of Regulations:</strong> (CCR)</td>
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<td><strong>General Provisions:</strong> (GP)</td>
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<td><strong>Penal Code:</strong> (PC)</td>
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<td><strong>Welfare and Institutions Code:</strong> (WI)</td>
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</tr>
</tbody>
</table>
| **MFT:** B&P § 4982.26 | Engaging in Sexual Contact with Client / Former Client | • Revocation / Denial of license or registration  
• Cost recovery. | • Revocation / Denial of license or registration  
• Cost recovery.  
The law requires revocation/denial of license or registration. |
| **LCSW:** B&P § 4992.33 | | | |
| **LEP:** B&P § 4989.58 | | | |
| **LPCC:** B&P § 4999.90(k) | | | |
| **GP:** B&P § 729 | | | |
| **MFT:** B&P § 4982(aa)(1) | Engaging In Act with a Minor Punishable as a Sexually Related Crime Regardless of Whether the Act occurred prior to or after registration or licensure, or Engaging in act described in Section 261, 286, 288a, or 289 of the Penal code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the Board. | • Revocation / Denial of license or registration  
• Cost recovery. | • Revocation / Denial of license or registration  
• Cost recovery.  
The Board considers this reprehensible offense to warrant revocation/denial. |
| **LCSW:** B&P § 4992.3(x)(1) | | | |
| **LEP:** B&P § 4989.54(y)(1) | | | |
| **LPCC:** B&P § 4999.90(z)(1) | | | |
| **MFT:** B&P § 4982(k), 4982.26 | Sexual Misconduct (Anything other than as defined in B&P Section 729) | • Revocation stayed  
• 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation  
• Take and pass licensure examinations as a condition precedent to resumption of practice  
• 7 years probation  
• Standard terms and conditions  
• Psychological/psychiatric evaluation as a condition precedent to resumption of practice  
• Supervised practice | • Revocation / Denial of license or registration  
• Cost recovery.  
(See B&P 4982.26, 4989.58, 4992.33)  
The Board considers this reprehensible offense to warrant revocation/denial. |
| MFT: B&P § 4982(k) | Psychotherapy |
| LCSW: B&P § 4992.3(k) | Education |
| LEP: B&P § 4989.54(n) | Take and pass licensure examination |
| LPCC: B&P § 4999.90(k) | Reimbursement of probation program |
| GP: B&P § 480 | And if warranted, enter and complete a rehabilitation program approved by the Board; abstain from controlled substances/use of alcohol, submit to biological-fluid drug and alcohol testing and samples; restricted practice, reimbursement of probation program costs. |

- Commission of an Act Punishable as a Sexually Related Crime
  - Revocation stayed
  - 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric evaluation and to implement any recommendations from that evaluation
  - Psychotherapy
  - 5 years probation; standard terms and conditions
  - Psychological/psychiatric evaluation as a condition precedent to the resumption of practice
  - Supervised practice
  - Education
  - Cost recovery
  - Reimbursement of probation program costs

- Impaired Ability to Function Safely Due to Mental Illness or Physical Illness Affecting Competency or Chemical Dependency
  - Revocation stayed
  - 60-90 days actual suspension and such additional time as may be necessary to obtain and review psychological or psychiatric evaluation and to implement any recommendations from that evaluation
  - 5 years probation; standard terms and conditions
  - Supervised practice
  - Cost recovery
  - Reimbursement of probation program costs.

- MFT: B&P § 4982(c), 4982.1
- LCSW: B&P § 4992.3(c), 4992.35
- LEP: B&P § 4989.26
- LPCC: B&P § 4999.90(c)
- GP: B&P § 480, 820

- In addition:
  - MENTAL ILLNESS: Psychological/psychiatric
<table>
<thead>
<tr>
<th>MFT:</th>
<th>B&amp;P § 4982(c), 4982.1</th>
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<tr>
<td>LCSW:</td>
<td>B&amp;P § 4992.3(c), 4992.35</td>
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<tr>
<td>LEP:</td>
<td>B&amp;P § 4989.54(c), 4989.56</td>
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<td>LPCC:</td>
<td>B&amp;P § 4999.90(c)</td>
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<td>GP:</td>
<td>B&amp;P § 480</td>
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<tr>
<th>LCSW:</th>
<th>B&amp;P § 4992.3(i)</th>
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<td>LEP:</td>
<td>B&amp;P § 4989.54(m)</td>
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<td>LPCC:</td>
<td>B&amp;P § 4999.90(i)</td>
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<td>GP:</td>
<td>B&amp;P § 480</td>
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| GP: | B&P § 480 |

### Chemical Dependency / Use of Drugs With Client While Performing Services
- Revocation stayed
- 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological/psychiatric clinical diagnostic evaluation and to implement any recommendations from that evaluation
- Random drug and alcohol testing
- 5 years probation
- Standard terms and conditions
- Psychological/psychiatric (clinical diagnostic) evaluation
- Supervised practice
- Education
- Supervised practice
- Education
- Rehabilitation program
- Abstain from controlled substances
- Submit to biological fluid tests and samples
- Cost recovery
- Reimbursement of probation program costs

And if warranted, psychotherapy; restricted practice.

### Intentionally / Recklessly Causing Physical or Emotional Harm to Client
- Revocation stayed
- 90-120 days actual suspension
- 5 years probation
- Standard terms and conditions
- Supervised practice
- Education
- Take and pass licensure examinations
- Cost recovery
- Reimbursement of probation program costs

And if warranted, psychological/psychiatric evaluation; psychotherapy, restricted practice.

### PHYSICAL ILLNESS
- Physical evaluation; and if warranted: restricted practice

### CHEMICAL DEPENDENCY
- Random drug and alcohol testing,
- Psychological/psychiatric clinical diagnostic evaluation;
- Supervised practice;
- Therapy;
- Rehabilitation program;
- Abstain from controlled substances/use of alcohol,
- Submit to biological fluid tests and samples;

And if warranted: restricted practice.

### Revocation / Denial of license or registration
- Cost recovery.
<table>
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<tr>
<th>Statutes and Regulations</th>
<th>Violation Category</th>
<th>Minimum Penalty</th>
<th>Maximum Penalty</th>
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</thead>
</table>
• 60-90 days actual suspension; 5 years probation  
• Standard terms and conditions; supervised practice  
• Education  
• Take and pass licensure examinations  
• Cost recovery  
• Reimbursement of probation program costs; And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid drug and alcohol testing; restricted practice. | • Revocation / Denial of license or registration  
• Cost recovery. |
| MFT: B&P § 4982(d)  
LCSW: B&P § 4992.3(d)  
CCR § 1881(m)  
LEP: B&P § 4989.54(k)  
LPCC: B&P § 4999.90(d)  
GP: B&P § 480 | | | |
| General Unprofessional Conduct | • Revocation stayed  
• 60-90 days actual suspension  
• 3-5 years probation  
• Standard terms and conditions  
• Supervised practice  
• Education  
• Cost recovery; reimbursement of probation program  
And if warranted: psychological/psychiatric evaluation; psychotherapy; rehabilitation program; abstain from controlled substances/use of alcohol, submit to biological fluid drug and alcohol testing; restricted practice, law and ethics course. | • Revocation / Denial of license or registration  
• Cost recovery. |
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<tr>
<th>Statutes and Regulations</th>
<th>Violation Category</th>
<th>Minimum Penalty</th>
<th>Maximum Penalty</th>
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</table>
| Business and Professions Code: (B&P)  
Title 16, California Code of Regulations: (CCR)  
General Provisions: (GP)  
Penal Code: (PC)  
Welfare and Institutions Code: (WI) | Conviction of a Crime Substantially Related to Duties, Qualifications, and Functions of a Licensee / Registrant | - Revocation stayed  
- 60 days actual suspension  
- 5 years probation  
- Standard terms and conditions  
- Supervised practice  
- Education  
- Cost recovery  
- Reimbursement of probation program costs (Costs and conditions of probation depend on the nature of the criminal offense). | - Revocation / Denial of license or registration  
- Cost recovery. |
| MFT: B&P § 4980.40(h), 4982(a)  
LCSW: B&P § 4992.3(a), 4996.2(d), 4996.18(a)  
LEP: B&P § 4998.20(a)(3), 4989.54(a)  
LPCC: B&P § 4999.90(a)  
GP: B&P § 480, 490, 493 | | | |
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<tr>
<th>Statutes and Regulations</th>
<th>Violation Category</th>
<th>Minimum Penalty</th>
<th>Maximum Penalty</th>
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<tr>
<td>MFT: B&amp;P § 4982(j) LCSW: B&amp;P § 4992.3(j) LEP: B&amp;P § 4999.90(j) LPCC: B&amp;P § 4999.90(j) GP: B&amp;P § 480, 650, 810</td>
<td>Commission of Dishonest, Corrupt, or Fraudulent Act Substantially Related to Qualifications, Duties and Functions of License</td>
<td>• Revocation stayed • 30-60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Law and ethics course • Reimbursement of probation program costs And if warranted, psychological/psychiatric evaluation; supervised practice; psychotherapy; take and pass licensure exams; restricted practice.</td>
<td>• Revocation / Denial of license or registration • Cost recovery.</td>
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<td>MFT: B&amp;P § 4980.02, 4982(l), 4982(s), 4982(t) LCSW: B&amp;P § 4992.3(l) CCR § 1845(a), 1845(b) LEP: B&amp;P § 4989.14 4989.54(r) 1858(j) LPCC: B&amp;P § 4999.90(l), 4999.90(s) 4999.90(t) GP: B&amp;P § 480</td>
<td>Performing, Representing Able to Perform, Offering to Perform, Permitting Trainee or Intern to Perform Beyond Scope of License / Competence</td>
<td>• Revocation stayed • 30-60 days actual suspension • 3-5 years probation • Standard terms and conditions • Education • Cost recovery • Reimbursement of probation program costs And if warranted, psychological/psychiatric evaluation; supervised practice; psychotherapy; take and pass licensure exams; restricted practice.</td>
<td>• Revocation / Denial of license or registration • Cost recovery.</td>
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<td>MFT: B&amp;P § 4982.25 LCSW: B&amp;P § 4992.36 LEP: B&amp;P § 4989.54(h), 4989.54(i) LPCC: B&amp;P § 4990.38 GP: B&amp;P § 141, 480</td>
<td>Discipline by Another State or Governmental Agency</td>
<td>• Determine the appropriate penalty by comparing the violation under the other state with California law. And if warranted: take and pass licensure examinations as a condition precedent to practice; reimbursement of probation program costs.</td>
<td>• Revocation / Denial of license or registration • Cost recovery.</td>
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<td>Statutes and Regulations</td>
<td>Violation Category</td>
<td>Minimum Penalty</td>
<td>Maximum Penalty</td>
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<td>Business and Professions Code: (B&amp;P)</td>
<td>Securing or Attempting to Secure a License by Fraud</td>
<td>• Revocation / Denial of license or registration application;</td>
<td>• Revocation / Denial of license or registration</td>
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<td>Title 16, California Code of Regulations: (CCR)</td>
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<td>• Cost recovery.</td>
<td>• Cost recovery.</td>
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<td>General Provisions: (GP)</td>
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<td>Penal Code: (PC)</td>
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<td>Welfare and Institutions Code: (WI)</td>
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<td>MFT: B&amp;P § 4982(b)</td>
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<td>LCSW: B&amp;P § 4992.3(b), 4992.7</td>
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<td>LEP: B&amp;P § 4989.54(b)</td>
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<td>LPCC: B&amp;P § 4999.90 (b)</td>
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<td>GP: B&amp;P § 480, 498, 499</td>
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<tr>
<td>Violation Category: Misrepresentation of License / Qualifications</td>
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<td>• Revocation stayed</td>
<td>• Revocation / Denial of license or registration</td>
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<td>MFT: B&amp;P § 4980, 4982(f)</td>
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<td>• 60 days actual suspension</td>
<td>• Cost recovery.</td>
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<td>CCR § 1845(a), 1845(b)</td>
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<td>• 3-5 years probation</td>
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<td>LCSW: B&amp;P § 4992.3(f), 4996</td>
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<td>• Standard terms and conditions</td>
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<td>CCR § 1881(a)</td>
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<td>• Education</td>
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<td>LEP: B&amp;P § 4989.54(l)</td>
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<td>• Cost recovery</td>
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<td>LPCC: B&amp;P § 4999.90(f)</td>
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<td>• Reimbursement of probation program costs</td>
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<td>GP: B&amp;P § 480</td>
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<td>And if warranted: take and pass licensure examinations.</td>
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<tr>
<td>Violation Category: Violates Exam Security / Subversion of Licensing Exam</td>
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<td>• Revocation stayed</td>
<td>• Revocation / Denial of license or registration</td>
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<td>MFT: B&amp;P § 4982(q)</td>
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<td>• 5 years probation</td>
<td>• Cost recovery.</td>
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<td>LCSW: B&amp;P § 4992.3(q)</td>
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<td>• Standard terms and conditions</td>
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<td>CCR § 1881(l)</td>
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<td>• Education</td>
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<td>LEP: B&amp;P § 4989.54(s)</td>
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<td>• Cost recovery</td>
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<td>LPCC: B&amp;P § 4999.90(q)</td>
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<td>• Reimbursement of probation program costs</td>
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<td>GP: B&amp;P § 123, 480, 496</td>
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<tr>
<td>Violation Category: Impersonating Licensee / Allowing Impersonation</td>
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<td>• Revocation stayed</td>
<td>• Revocation / Denial of license or registration</td>
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<tr>
<td>MFT: B&amp;P § 4982(g)</td>
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<td>• 60-90 days actual suspension</td>
<td>• Cost recovery.</td>
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<td>LCSW: B&amp;P § 4992.3(g), 4992.7</td>
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<td>• 5 years probation</td>
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<tr>
<td>CCR § 1881(b)</td>
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<td>• Supervised practice</td>
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<tr>
<td>LEP: CCR § 1858(a)</td>
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<td>• Standard terms and conditions</td>
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<td>LPCC: B&amp;P § 4999.90(g)</td>
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<td>• Psychological/psychiatric evaluation</td>
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<td>GP: B&amp;P § 119, 480</td>
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<td>• Psychotherapy</td>
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<td>Statutes and Regulations</td>
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| Business and Professions Code: (B&P) | Aiding and Abetting Unlicensed / Unregistered Activity | • Revocation stayed  
• 30-90 days actual suspension  
• 3-5 years probation  
• Standard terms and conditions  
• Education  
• Cost recovery  
• Reimbursement of probation program costs  
And if warranted: supervised practice. | • Revocation / Denial of license or registration  
• Cost recovery |
| Title 16, California Code of Regulations: (CCR) | | | |
| General Provisions: (GP) | | | |
| Penal Code: (PC) | | | |
| Welfare and Institutions Code: (WI) | | | |
| MFT: B&P § 4982(h) | | | |
| LCSW: B&P § 4992.3(h) | | | |
| CCR § 1881(c) | | | |
| LEP: B&P § 4989.54 (t) | | | |
| LPCC: B&P § 4999.90(h) | | | |
| GP: B&P § 125, 480 | | | |
| | | | |
| MFT: B&P § 4982(m) | Failure to Maintain Confidentiality | • Revocation stayed  
• 60-90 days actual suspension  
• 3-5 years probation  
• Standard terms and conditions  
• Education  
• Take and pass licensure exams  
• Cost recovery  
• Reimbursement of probation program costs | • Revocation / Denial of license or registration  
• Cost recovery |
| LCSW: B&P § 4992.3(m) | | | |
| CCR § 1881(i) | | | |
| LEP: B&P § 4989.54 (q) | | | |
| LPCC: B&P § 4999.90(m) | | | |
| GP: B&P § 480 | | | |
| | | | |
| MFT: B&P § 728 | Failure to Provide Sexual Misconduct Brochure | • Revocation stayed  
• 1-3 years probation  
• Standard terms and conditions  
• Education  
• Cost recovery  
• Reimbursement of probation program costs. | • Revocation / Denial of license or registration  
• Cost recovery |
| LCSW: B&P § 728 | | | |
| LPCC: B&P § 728 | | | |
| GP: B&P § 480 | | | |
| | | | |
| MFT: B&P § 4982(r), 4982(t), 4982(u) | Improper Supervision of Trainee / Intern / Associate / Supervisee | • Revocation stayed  
• 30-90 days actual suspension  
• 2 years probation  
• Standard terms and conditions  
• Education  
• Cost recovery  
• Reimbursement of probation program costs  
And if warranted: supervised practice. | • Revocation / Denial of license or registration  
• Cost recovery |
<p>| 4983.1, 1845(b) | | | |
| LCSW: B&amp;P § 4992.3(r) | | | |
| CCR § 1833.1, 1845(b) | | | |
| LEP: CCR § 1881(h) | | | |
| LPCC: B&amp;P § 4999.90(r) | | | |
| 4999.90(t), 4999.90(u) | | | |</p>
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<th>Statutes and Regulations</th>
<th>Violation Category</th>
<th>Minimum Penalty</th>
<th>Maximum Penalty</th>
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<tbody>
<tr>
<td>Business and Professions Code: (B&amp;P)</td>
<td>Violations of the Chapter or Regulations by licensees or Registrants / Violations Involving Acquisition and Supervision of Required Hours of Experience</td>
<td>• Revocation stayed&lt;br&gt;• Registration on probation until exams are passed and license issued&lt;br&gt;• License issued on probation for one year&lt;br&gt;• Rejection of all illegally acquired hours&lt;br&gt;• Standard terms and conditions&lt;br&gt;• Education&lt;br&gt;• Cost recovery&lt;br&gt;• Reimbursement of probation program costs.</td>
<td>• Revocation / Denial of license or registration&lt;br&gt;• Cost recovery</td>
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<tr>
<td>Title 16, California Code of Regulations: (CCR)</td>
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<td>General Provisions: (GP)</td>
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<td>Welfare and Institutions Code: (WI)</td>
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<td>MFT: B&amp;P § 4982(e), 4982(u)</td>
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<td>LCSW: B&amp;P § 4992.3(e), 4992.3(r)</td>
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<td>LEP: B&amp;P § 4989.54(f)</td>
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<td>LPCC: B&amp;P § 4999.90(e) 4999.90(u)</td>
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<td>GP: B&amp;P § 480</td>
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<tr>
<td>Pay, Accept, Solicit Fee for Referrals</td>
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<td>MFT: B&amp;P § 4982(o)</td>
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<td>LCSW: B&amp;P § 4992.3(o) CCR § 1881(n)</td>
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<td>LEP: B&amp;P § 4989.54(p)</td>
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<td>LPCC: B&amp;P § 4999.90 (o)</td>
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<td>GP: B&amp;P § 650</td>
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<td>Failure to Disclose Fees in Advance</td>
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<td>MFT: B&amp;P § 4982(n)</td>
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<td>LCSW: B&amp;P § 4992.3(n) CCR § 1881(j)</td>
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<td>LEP: B&amp;P § 4989.54(0)</td>
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<td>LPCC: B&amp;P § 4999.90 (n)</td>
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<td>GP: B&amp;P § 650</td>
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<tr>
<td>False / Misleading / Deceptive / Improper Advertising</td>
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<td>MFT: B&amp;P § 4980.46, 4982(p)</td>
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<td>LCSW: B&amp;P § 4992.3(p) CCR § 1881(k)</td>
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<td>LEP: B&amp;P § 4989.54(e)</td>
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<td>LPCC: B&amp;P § 4999.90(p)</td>
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<td>ALL: CCR § 1811</td>
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<td>GP: B&amp;P § 480, 651, 17500</td>
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III. Model Disciplinary Orders

Model Disciplinary Orders are divided into two categories. The first category consists of **Optional Terms and Conditions of Probation** that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case. The second category consists of the **Standard Terms and Conditions of Probation** which must appear in all Proposed Decisions and proposed stipulated agreements.

To enhance the clarity of a Proposed Decision or Stipulation, the Board requests that all optional conditions (1-16) that are being imposed be listed first in sequence followed immediately by all of the standard terms and conditions, which include cost recovery (17–32, 19–34).

**Optional Terms and Conditions of Probation**

Depending on the nature and circumstances of the case, the optional terms and conditions of probation that may appear are as follows:

1. Actual suspension
2. Psychological / Psychiatric evaluation
3. Psychotherapy
4. Clinical Diagnostic Evaluation
5. Supervised Practice
6. Education
7. Take and Pass licensure examinations
8. Rehabilitation Program
9. Abstain from Controlled Substances/Submit to Biological Fluid Testing and Samples Submit to Random Drug and Alcohol Testing
10. Abstain from Use of Alcohol / Submit to Biological Fluid Testing and Samples Submit to Random Drug and Alcohol Testing
11. Restricted Practice
12. Restitution
13. Reimbursement of Probation Program
14. Physical Evaluation
15. Monitor Billing System
17. Law and Ethics Course

1. **Actual Suspension**

A. Commencing from the effective date of this decision, respondent shall be suspended from the practice of ________ for a period of ___ days.

OR

B. Commencing from the effective date of this decision, respondent shall be suspended from the practice of ________ for a period of ____ days, and such additional time as may be necessary to obtain and review the clinical diagnostic, psychological or psychiatric evaluation, to implement any recommendations from that evaluation, and to successfully complete the required licensure
examinations as a condition precedent to resumption of practice as outlined in condition #____ (Take and pass licensure examinations).

Respondent shall be responsible for informing his or her employer of the Board’s decision, and the reasons for the length of suspension. Respondent shall submit satisfactory compliance with this condition. Prior to the lifting of the actual suspension of the license, the Board shall receive pertinent documentation confirming that respondent is safe to return to practice under specific terms and conditions as determined by the Board.

2. Psychological / Psychiatric Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall complete a psychological or psychiatric evaluation by such licensed psychologists or psychiatrists as are appointed by the Board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such evaluator shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a counselor and such other information as the Board may require. Respondent shall execute a Release of Information authorizing the evaluator to release all information to the Board. Respondent shall comply with the recommendations of the evaluator.

Note: If supervised practice is not part of the order, and the evaluator finds the need for supervised practice, then the following term shall be added to the disciplinary order. If a psychological or psychiatric evaluation indicates a need for supervised practice, (within 30 days of notification by the Board), respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor by which the respondent's practice will be supervised. If respondent is determined to be unable to practice independently and safely, upon notification, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee. Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board or its designee has notified the respondent of its determination that respondent may resume practice.

(FYI: The Board requires the appointment of evaluators who have appropriate knowledge, training, and experience in the area involved in the violation).

3. Psychotherapy

Respondent shall participate in ongoing psychotherapy with a California licensed mental health professional who has been approved by the Board. Within 60 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval the name and qualifications of one or more therapists of respondent's choice. Such therapist shall possess a valid California license to practice and shall have had no prior business, professional, or personal relationship with respondent, and shall not be the respondent's supervisor. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy is to be borne by respondent.
Respondent may, after receiving the Board's written permission, receive therapy via videoconferencing if respondent's good faith attempts to secure face-to-face counseling are unsuccessful due to the unavailability of qualified mental health care professionals in the area. The Board may require that respondent provide written documentation of his or her good faith attempts to secure counseling via videoconferencing.

Respondent shall provide the therapist with a copy of the Board's decision no later than the first counseling session. Upon approval by the Board, respondent shall undergo and continue treatment until the Board or its designee determines that no further psychotherapy is necessary.

Respondent shall take all necessary steps to ensure that the treating psychotherapist submits quarterly written reports to the Board concerning respondent's fitness to practice, progress in treatment, and to provide such other information as may be required by the Board. Respondent shall execute a Release of Information authorizing the therapist to divulge information to the Board.

If the treating psychotherapist finds that respondent cannot practice safely or independently, the psychotherapist shall notify the Board within three (3) working days. Upon notification by the Board, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee that respondent may do so. Respondent shall not thereafter engage in any practice for which a license issued by the Board is required until the Board or its designee has notified respondent that he/she may resume practice. Respondent shall document compliance with this condition in the manner required by the Board.

(FYI: The Board requires that therapists have appropriate knowledge, training and experience in the area involved in the violation).

4. Clinical Diagnostic Evaluation

Within twenty (20) days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board’s Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, his or her license or registration shall be automatically suspended for a minimum of one month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least two (2) times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent’s license or registration shall remain suspended until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one month of negative drug test results. Respondent shall comply with any restrictions or recommendations made by the Board as a result of the clinical diagnostic evaluation.

4.5. Supervised Practice

Within 30 days of the effective date of this decision, respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor. The supervisor shall be a current California licensed practitioner in
respondent's field of practice, who shall submit written reports to the Board or its designee on a quarterly basis verifying that supervision has taken place as required and including an evaluation of respondent's performance. The supervisor shall be independent, with no prior business, professional or personal relationship with respondent. If respondent is unable to secure a supervisor in his or her field of practice due to the unavailability of mental health care professionals in the area, then the Board may consider the following options for satisfying this probationary term:

(1) Permitting the respondent to receive supervision via videoconferencing; or,
(2) Permitting respondent to secure a supervisor not in the respondent's field of practice.

The forgoing options shall be considered and exhausted by the Board in the order listed above. The Board may require that respondent provide written documentation of his or her good faith attempts to secure face-to-face supervision, supervision via videoconferencing or to locate a mental health professional that is licensed in the respondent's field of practice.

Respondent shall complete any required consent forms and sign an agreement with the supervisor and the Board regarding the Respondent and the supervisor's requirements and reporting responsibilities. Failure to file the required reports in a timely fashion shall be a violation of probation. Respondent shall give the supervisor access to respondent's fiscal and client records. Supervision obtained from a probation supervisor shall not be used as experience gained toward licensure.

If the supervisor is no longer available, respondent shall notify the Board within 15 days and shall not practice until a new supervisor has been approved by the Board. All costs of the supervision shall be borne by respondent. Supervision shall consist of at least one (1) hour per week in individual face to face meetings. The supervisor shall not be the respondent's therapist.

[Optional - Respondent shall not practice until he/she has received notification that the Board has approved respondent's supervisor.]

5.6. Education

Respondent shall take and successfully complete the equivalency of _____ semester units in each of the following areas ________ . All course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, educational psychologist, or professional clinical counselor or through a course approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all course work must be completed within one year from the effective date of this Decision.

Within 90 days of the effective date of the decision respondent shall submit a plan for prior Board approval for meeting these educational requirements. All costs of the course work shall be paid by the respondent. Units obtained for an approved course shall not be used for continuing education units required for renewal of licensure.

(FYI: This term is appropriate when the violation is related to record keeping, which includes but is not limited to: recordkeeping, documentation, treatment planning, progress notes, security of records, billing and reporting requirements.)

6.7. Take and Pass Licensure Examinations
Respondent shall take and pass the licensure exam(s) currently required of new applicants for the license possessed by respondent. Respondent shall not practice until such time as respondent has taken and passed these examinations. Respondent shall pay the established examination fees. If respondent has not taken and passed the examination within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation.

7.8. Rehabilitation Program

Within fifteen (15) days from the effective date of the decision, respondent shall submit to the Board or its designee for prior approval the name of one or more rehabilitation program(s). Respondent shall enter a rehabilitation and monitoring program within fifteen (15) days after notification of the board’s approval of such program. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board or its designee. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall sign a release allowing the program to release to the Board all information the Board deems relevant.

Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random biological fluid drug and alcohol testing, abstention from drugs and alcohol, use of worksite monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. All costs of participating in the program(s) shall be borne by the respondent.

8.9. Abstain from Controlled Substances / Submit to Biological-Fluid Drug and Alcohol Testing and Samples

Respondent shall completely abstain from the use or possession of controlled or illegal substances unless lawfully prescribed by a medical practitioner for a bona fide illness.

Respondent shall immediately submit to random and directed biological drug and alcohol fluid testing, at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum number of random tests per year for the duration of the probationary term, as prescribed in the Uniform Standards Related to Substance Abuse. The length of time and frequency will be determined by the Board. Respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the Respondent, the Respondent's current employer, and the supervisor, if any, and shall be a violation of probation.

If the Respondent tests positive for a controlled substance, Respondent's license or registration shall be automatically suspended. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

9.10. Abstain from Use of Alcohol / Submit to Biological-Fluid Drug and Alcohol Testing and Samples

Respondent shall completely abstain from the use intake of alcoholic beverages during the period of
probation.

Respondent shall immediately submit to random and directed biological fluid drug and alcohol testing, at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum number of random tests per year for the duration of the probationary term, as prescribed in the Uniform Standards Related to Substance Abuse. The length of time and frequency will be determined by the Board. The Respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the Respondent, the Respondent's current employer, and the supervisor, if any, and shall be a violation of probation.

If the Respondent tests positive for a controlled substance, Respondent’s license or registration shall be automatically suspended. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

40.11. Restricted Practice

Respondent's practice shall be limited to ____________. Within 30 days from the effective date of the decision, respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall notify their supervisor of the restrictions imposed on their practice.

41.12. Restitution

Within 90 days of the effective date of this decision, respondent shall provide proof to the Board or its designee of restitution in the amount of $________ paid to ________.

42.13. Reimbursement of Probation Program

Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period. Reimbursement costs shall be $________ per year/$______ per month.

43.14. Physical Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall complete a physical evaluation by such licensed physicians as are appointed by the Board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such physician shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a therapist and such other information as the Board may require. Respondent shall execute a Release of Information authorizing the physician to release all information to the Board. Respondent shall comply with the recommendations of the physician.

If a physical evaluation indicates a need for medical treatment, within 30 days of notification by the Board, respondent shall submit to the Board or its designee the name and qualifications of the
medical provider, and a treatment plan by the medical provider by which the respondent's physical treatment will be provided.

If respondent is determined to be unable to practice independently and safely, upon notification, respondent shall immediately cease practice and shall resume practice until notified by the Board or its designee. Respondent shall not engage in any practice for which not a license issued by the Board is required, until the Board or its designee has notified the respondent of its determination that respondent may resume practice.

14.15. Monitor Billing System

Within 30 days of the effective date of this decision, respondent shall obtain the services of an independent billing system to monitor and document the dates and times of client visits. Clients are to sign documentation stating the dates and time of services rendered by respondent and no bills are to be issued unless there is a corresponding document signed by the client in support thereof. The billing system service shall submit quarterly written reports concerning respondent’s cooperation with this system. The cost of the service shall be borne by respondent.

15.16. Monitor Billing System Audit

Within 60 days of the effective date of this decision, respondent shall provide to the Board or its designee the names and qualifications of three auditors. The Board or its designee shall select one of the three auditors to annually audit respondent’s billings for compliance with the Billing System condition of probation. During said audit, randomly selected client billing records shall be reviewed in accordance with accepted auditing/accounting standards and practices. The cost of the audits shall be borne by respondent. Failure to pay for the audits in a timely fashion shall constitute a violation of probation.

16.17. Law and Ethics Course

Respondent shall take and successfully complete the equivalency of two semester units in law and ethics. Course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, educational psychologist, professional clinical counselor as defined in Sections 4980.40, 4996.18, 4999.32 or 4999.33 of the Business and Professions Codes and Section 1854 of Title 16 of the California Code of Regulations or through a course approved by the Board. Classroom attendance must be specifically required. Within 90 days of the effective date of this Decision, respondent shall submit a plan for prior Board approval for meeting this educational requirement. Said course must be taken and completed within one year from the effective date of this Decision. The costs associated with the law and ethics course shall be paid by the respondent. Units obtained for an approved course in law and ethics shall not be used for continuing education units required for renewal of licensure.

(FYI: This term is appropriate when the licensee fails to keep informed about or comprehend the legal obligations and/or ethical responsibilities applicable to their actions. Examples include violations involving boundary issues, transference/countertransference, breach of confidentiality and reporting requirements.)
Standard Terms and Conditions of Probation

The sixteen standard terms and conditions generally appearing in every probation case are as follows:

17. Obey All Laws
18. File Quarterly Reports
19. Comply with Probation Program
20. Interviews with the Board
21. Residing or Practicing Out-of-State
22. Failure to Practice- California Resident
23. Change of Place of Employment or Place of Residence
24. Supervision of Unlicensed Persons
25. Notification to Clients
26. Notification to Employer
27. Violation of Probation
28. Maintain Valid License
29. License Surrender
30. Instruction of Coursework Qualifying for Continuing Education
31. Notification to Referral Services
32. Cost Recovery

Specific Language for Standard Terms and Conditions of Probation
(To be included in all Decisions)

17-18. Obey All Laws

Respondent shall obey all federal, state and local laws, all statutes and regulations governing the licensee, and remain in full compliance with any court ordered criminal probation, payments and other orders. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within 30 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall pay the cost associated with the fingerprint process.

18-19. File Quarterly Reports

Respondent shall submit quarterly reports, to the Board or its designee, as scheduled on the “Quarterly Report Form” (rev. 01/12/01). Respondent shall state under penalty of perjury whether he/she has been in compliance with all the conditions of probation. Notwithstanding any provision for tolling of requirements of probation, during the cessation of practice respondent shall continue to submit quarterly reports under penalty of perjury.

19-20. Comply with Probation Program

Respondent shall comply with the probation program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the program.
Interviews with the Board

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

Residing or Practicing Out-of-State

In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4980.02, 4989.14, 4996.9, or 4999.20 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in practice within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if respondent’s periods of temporary or permanent residence or practice outside California total two years. However, respondent’s license shall not be cancelled as long as respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

(OPTIONAL)

Any respondent disciplined under Business and Professions Code Sections 141(a), 4982.25, 4992.36, 4989.54(h), 4989.54(i), or 4990.38 (another state discipline) may petition for modification or termination of penalty: 1) if the other state’s discipline terms are modified, terminated or reduced; and 2) if at least one year has elapsed from the effective date of the California discipline.

Failure to Practice- California Resident

In the event respondent resides in the State of California and for any reason respondent stops practicing in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4980.02, 4989.14, 4996.9, or 4999.20 of the Business and Professions Code.

Change of Place of Employment or Place of Residence
Respondent shall notify the Board or its designee in writing within 30 days of any change of place of employment or place of residence. The written notice shall include the address, the telephone number and the date of the change.

24.25. Supervision of Unlicensed Persons

While on probation, respondent shall not act as a supervisor for any hours of supervised practice required for any license issued by the Board. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this Decision.

25.26. Notification to Clients

Respondent shall notify all clients when any term or condition of probation will affect their therapy or the confidentiality of their records, including but not limited to supervised practice, suspension, or client population restriction. Such notification shall be signed by each client prior to continuing or commencing treatment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

(FYI: Respondents should seek guidance from Board staff regarding appropriate application of this condition).

26.27. Notification to Employer

Respondent shall provide each of his or her current or future employers, when performing services that fall within the scope of practice of his or her license, a copy of this Decision and the Statement of Issues or Accusation before commencing employment. Notification to the respondent’s current employer shall occur no later than the effective date of the Decision or immediately upon commencing employment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

The Respondent shall provide to the Board the names, physical addresses, and telephone numbers of all employers, supervisors, and contractors.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor or contractor, and the Board to allow the Board to communicate with the employer and supervisor or contractor regarding the licensee or registrant’s work status, performance, and monitoring.

27.28. Violation of Probation

If respondent violates the conditions of his/her probation, the Board, after giving respondent notice and the opportunity to be heard, may set aside the stay order and impose the discipline (revocation/suspension) of respondent ’s license [or registration] provided in the decision.

If during the period of probation, an accusation, petition to revoke probation, or statement of issues has been filed against respondent's license [or registration] or application for licensure, or the
Attorney General's office has been requested to prepare such an accusation, petition to revoke probation, or statement of issues, the probation period set forth in this decision shall be automatically extended and shall not expire until the accusation, petition to revoke probation, or statement of issues has been acted upon by the board. Upon successful completion of probation, respondent's license [or registration] shall be fully restored.

28.29. Maintain Valid License

Respondent shall, at all times while on probation, maintain a current and active license with the Board, including any period during which suspension or probation is tolled. Should respondent's license, by operation of law or otherwise, expire, upon renewal respondent’s license shall be subject to any and all terms of this probation not previously satisfied.

29.30. License Surrender

Following the effective date of this decision, if respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily request the surrender of his/her license to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 30 calendar days deliver respondent’s license and certificate and if applicable wall certificate to the Board or its designee and respondent shall no longer engage in any practice for which a license is required. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of respondent’s license shall be considered to be a disciplinary action and shall become a part of respondent's license history with the Board. Respondent may not petition the Board for reinstatement of the surrendered license. Should respondent at any time after voluntary surrender ever reapply to the Board for licensure respondent must meet all current requirements for licensure including, but not limited to, filing a current application, meeting all current educational requirements, and taking and passing any and all examinations required of new applicants.

30.31. Instruction of Coursework Qualifying for Continuing Education

Respondent shall not be an instructor of any coursework for continuing education credit required by any license issued by the Board.

34.32. Notification to Referral Services

Respondent shall immediately send a copy of this decision to all referral services registered with the Board in which respondent is a participant. While on probation, respondent shall send a copy of this decision to all referral services registered with the Board that respondent seeks to join.

32.33. Cost Recovery

Respondent shall pay the Board $___________ as and for the reasonable costs of the investigation and prosecution of Case No. _____________. Respondent shall make such payments as follows: [Outline payment schedule.] Respondent shall make the check or money order payable to the
Board of Behavioral Sciences and shall indicate on the check or money order that it is the cost recovery payment for Case No. ___________. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full payment has been made. Should any part of cost recovery not be paid in accordance with the outlined payment schedule, respondent shall be considered to be in violation of probation. A period of non-practice by respondent shall not relieve respondent of his or her obligation to reimburse the board for its costs.

Cost recovery must be completed six months prior to the termination of probation. A payment plan authorized by the Board may be extended at the discretion of the Enforcement Manager based on good cause shown by the probationer.
IV. BOARD POLICIES AND GUIDELINES

Accusations

The Board of Behavioral Sciences (Board) has the authority pursuant to Section 125.3 of the Business and Professions Code to recover costs of investigation and prosecution of its cases. The Board requests that this fact be included in the pleading and made part of the accusation.

Statement of Issues

The Board will file a Statement of Issues to deny an application of a candidate for the commission of an act, which if committed by a licensee would be cause for license discipline.

Stipulated Settlements

The Board will consider entering into stipulated settlements to promote cost effective consumer protection and to expedite disciplinary decisions. The respondent should be informed that in order to stipulate to settlement with the Board, he or she may be required to admit to the violations set forth in the Accusation. The Deputy Attorney General must accompany all proposed stipulations submitted with a memo addressed to Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions, and proposed penalty along with a recommendation.

Recommended Language for License Surrenders

"Admission(s) made in the stipulation are made solely for the purpose of resolving the charges in the pending accusation, and may not be used in any other legal proceedings, actions or forms, except as provided in the stipulation.

The admissions made in this stipulation shall have no legal effect in whole or in part if the Board does not adopt the stipulation as its decision and order.

Contingency
This stipulation shall be subject to approval by the Board of Behavioral Sciences. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Behavioral Sciences may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his/her counsel. By signing the stipulation, Respondent understands and agrees that he/she may not withdraw his/her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

Respondent fully understands that when the Board adopts the license surrender of respondent's license, respondent will no longer be permitted to practice as a _____ in California. Respondent further understands that the license surrender of his or her license, upon adoption, shall be considered to be a disciplinary action and shall become a part of respondent.'s license history with the Board.

The respondent further agrees that with the adoption by the Board of his or her license surrender, respondent may not petition the Board for reinstatement of the surrendered license.
Respondent may reapply to the Board for licensure three years from the date of surrender and must meet all current requirements for licensure including, but not limited to, filing a current application, meeting all current educational requirements, and taking and passing any and all examinations required of new applicants.

Respondent understands that should he or she ever reapply for licensure as a _____ or should he or she ever apply for any other registration or licensure issued by the Board, or by the Board of Psychology, all of the charges contained in Accusation No._____ shall be deemed admitted for the purpose of any Statement of Issues or other proceeding seeking to deny such application or reapplication."

**Recommended Language for Registration Applicants**

IT IS HEREBY ORDERED THAT Respondent ___________ be issued a Registration as a _______________. Said Registration shall be revoked. The revocation will be stayed and Respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if Respondent is issued a subsequent registration or becomes licensed during the probationary period.

**Recommended Language for Registrants**

IT IS HEREBY ORDERED THAT___________ Registration Number ________ issued to Respondent ____________ is revoked. The revocation will be stayed and respondent placed on _____ years probation with the following terms and conditions. Probation shall continue on the same terms and conditions if Respondent is issued a subsequent registration or becomes licensed during the probationary period.

**Proposed Decisions**

The Board requests that proposed decisions include the following if applicable:

A. Names and addresses of all parties to the action.
B. Specific Code section violated with the definition of the code in the Determination of Issues.
C. Clear description of the acts or omissions that constitute a violation.
D. Respondent's explanation of the violation in the Findings of fact if he or she is present at the hearing.
E. Explanation for deviation from the Board's Disciplinary Guidelines.

When a probation order is imposed, the Board requests that the Order first list the Optional Terms and Conditions (1-16) followed by the Standard Terms and Conditions (17-22) as they may pertain to the particular case. If the respondent fails to appear for his or her scheduled hearing or does not submit a notice of defense, such inaction shall result in a default decision to revoke licensure or deny application.
Reinstatement / Reduction of Penalty Hearings

The primary concerns of the Board at reinstatement or penalty relief hearings are (1) the Rehabilitation Criteria for Suspensions or Revocations identified in Title 16, California Code of Regulations Section 1814, and (2) the evidence presented by the petitioner of his or her rehabilitation. The Board is not interested in retrying the original revocation or probation case. The Board shall consider, pursuant to Section 1814, the following criteria of rehabilitation:

1. Nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.
2. Evidence of any acts committed subsequent to the acts or crimes under consideration as grounds for suspension or revocation under Section 490 of the Code.
3. The time that has elapsed since commission of the acts or crimes giving rise to the suspension or revocation.
4. Whether the licensee has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against such person.
5. If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
6. Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent, or immaterial.
7. Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.
8. Evidence, if any, of rehabilitation submitted by the licensee.

In the Petition Decision the Board requires a summary of the offense and the specific codes violated which resulted in the revocation, surrender, or probation of the license.

In petitioning for Reinstatement or Reduction of Penalty under Business and Professions Code Section 4982.2, the petitioner has the burden of demonstrating that he or she has the necessary and current qualifications and skills to safely engage in the practice of marriage and family therapy, clinical social work, educational psychology, or professional clinical counselor within the scope of current law, and accepted standards of practice. In reaching its determination, the Board considers various factors including the following:

A. The original violations for which action was taken against the petitioner's license;
B. Prior disciplinary and criminal actions taken against the petitioner by the Board, any State, local, or Federal agency or court;
C. The petitioner's attitude toward his or her commission of the original violations and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts;
D. The petitioner's documented rehabilitative efforts;
E. Assessment of the petitioner's rehabilitative and corrective efforts;
F. In addition, the Board may consider other appropriate and relevant matters not reflected above.

If the Board should deny a request for reinstatement of a revoked license or reduction of penalty (modification or termination of probation), the Board requests the Administrative Law Judge provide
technical assistance in the formulation of language clearly setting forth the reasons for denial.

If a petitioner fails to appear for his or her scheduled reinstatement or penalty relief hearing, such proceeding shall go forth without the petitioner's presence and the Board will issue a decision based on the written evidence and oral presentations submitted.
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Memorandum

To: Doreatha Johnson
   Deputy Director & Chief Counsel
   Department of Consumer Affairs
   Legal Affairs Division

From: Kathleen A. Lynch
   Deputy Attorney General
   Government Law Section
   Office of the Attorney General – Sacramento

Subject: Uniform Standards Related to Substance-Abusing Licensees (Bus. & Prof. Code, §§ 315 - 315.4)

Executive Summary

Issues

You asked us to review Legislative Counsel’s letter of October 27, 2011, which rendered certain opinions regarding the Substance Abuse Coordination Committee (SACC), which was created by Business and Professions Code section 315 to formulate uniform standards for use by the healing arts boards to deal with substance-abusing licensees. Legislative Counsel opined that:

(1) SACC was required to formally promulgate the uniform standards as regulations pursuant to the Administrative Procedures Act (APA), and

(2) the healing arts boards are required to use such standards under Business and Professions Code sections 315.

Summary of Responses

With respect to question (1), we see things differently from Legislative Counsel, in two respects.

First, we believe that SACC’s adoption of uniform standards does not need to undergo the formal rule-making process under the APA. While other laws could potentially require the adoption of regulations when the standards are implemented by the boards (such as statutes governing particular boards or the APA’s provisions applicable to disciplinary proceedings), we disagree that section 315 itself triggers the need to issue the uniform standards as regulations.

Second, even assuming the uniform standards must be adopted as regulations, we disagree with Legislative Counsel’s apparent assumption that SACC would issue the regulations under section 315. The legislative histories of the relevant laws and statutory authorities of the
individual boards indicate that the boards would issue the regulations to implement the uniform standards.

As to question (2), we agree with Legislative Counsel that the healing arts boards must use the uniform standards under sections 315. A board cannot simply disregard a specific standard because it does not like the standard or because it believes that the standard is too cumbersome. However, some specific uniform standards themselves recognize a board's discretion whether to order a particular action in the first place. Thus, boards still retain authority to determine if they will undertake certain types of actions if permitted under a specific uniform standard.

**Statutory Background**

In 2008, SACC was legislatively established within the Department of Consumer Affairs to create uniform standards to be used by the healing arts boards when addressing licensees with substance abuse problems. (Bus. & Prof. Code, § 315, subd. (a); Stats. 2008, ch. 548 (SB 1441).) By January 1, 2010, SACC was required to “formulate uniform and specific standards” in 16 identified areas “that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.” (Id. at § 315, subd. (c).) These 16 standards include requirements for: clinical diagnostic evaluation of licensees; the temporary removal of the licensee from practice for clinical diagnostic evaluation and any treatment, and criteria before being permitted to return to practice on a full-time or part-time basis; aspects of drug testing; whether inpatient, outpatient, or other type of treatment is necessary; worksite monitoring requirements and standards; consequences for major and minor violations; and criteria for a licensee to return to practice and petition for reinstatement of a full and unrestricted license. (Ibid.) SACC meetings to create these standards are subject to Bagley-Keene Act open meeting requirements. (Id. at subd. (b).)

On March 3, 2009, SACC conducted its first public hearing, which included a discussion of an overview of the diversion programs, the importance of addressing substance abuse issues for health care professionals, and the impact of allowing health care professionals who are impaired to continue to practice. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) During this meeting, SACC members agreed to draft uniform guidelines for each of the standards, and during subsequent meetings, roundtable discussions were held on the draft uniform standards, including public comments. (Ibid.) In December 2009, the Department of Consumer Affairs adopted the uniform guidelines for each of the standards required by SB 1441. (Ibid.) These standards have subsequently been amended by SACC, and the current standards were issued in April of 2011.

According to the author of SB 1441 (Ridley-Thomas), the intent of the legislation was to protect the public by ensuring that, at a minimum, a set of best practices or standards were adopted by health-care-related boards to deal with practitioners with alcohol or drug problems. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.) The legislation was also meant to ensure uniformity among the
standards established throughout the healing arts licensing boards under the Department of Consumer Affairs. (Ibid.) Specifically, the author explains:

SB 1441 is not attempting to dictate to [the health-related boards] how to run their diversion programs, but instead sets parameters for these boards. The following is true to all of these boards’ diversion programs: licensees suffer from alcohol or drug abuse problems, there is a potential threat to allowing licensees with substance abuse problems to continue to practice, actual harm is possible and, sadly, has happened. The failures of the Medical Board of California’s (MBC) diversion program prove that there must be consistency when dealing with drug or alcohol issues of licensees.


In the view of its author, “[t]his bill allows the boards to continue a measure of self-governance; the standards for dealing with substance-abusing licensees determined by the commission set a floor, and boards are permitted to establish regulations above these levels.” (Ibid.)

In 2010, additional legislation was enacted to further implement section 315. Specifically, it provided that the healing arts boards, as described in section 315 and with the exception of the Board of Registered Nursing, “may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315.” (Bus. & Prof. Code, § 315.4, subd. (a); Stats. 2010, ch. 517 (SB 1172).) An order to cease practice does not require a formal hearing and does not constitute a disciplinary action. (Id. § 315.4 subds. (b), (c).)

According to the author of SB 1172 (Negrete McLeod), this subsequent statute was necessary “because current law does not give boards the authority to order a cease practice.” (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) The author explains:
Although most of the adopted guidelines do not need additional statutes for implementation, there are a few changes that must be statutorily adopted to fully implement these standards. This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee’s probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation. The ability of a board to order a licensee to cease practice under these circumstances provides a delicate balance to the inherent confidentiality of diversion programs. The protection of the public remains the top priority of boards when dealing with substance abusing licensees.

(Senate Third Reading, Analysis of SB 1172 (2010-2011 Reg. Sess.); as amended June 22, 2010.)

**Legal Analysis**

1a. Section 315 should be construed as not requiring that the uniform standards be adopted as regulations.

Legislative Counsel opined that SACC must adopt the uniform standards as regulations under section 315, because (1) the standards meet the definition of regulations, (2) none of the express exemptions under Government Code section 11340.9 remove them from the APA rule-making process, and (3) section 315 contains no express language precluding application of the rulemaking provisions of the APA. (October 27, 2011 Letter, p. 5.) We have a different view on the threshold issue of whether the standards qualify as a regulation under section 315.

Under the APA, a regulation is defined as “every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.” (Gov. Code, § 11342.600.) “No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless [it has been adopted in compliance with the APA].” (Id. § 11340.5, subd. (a).) This requirement cannot be superseded or modified by subsequent legislation, unless the statute does so expressly. (Id. § 11346, subd. (a).)

An agency standard subject to the APA has two identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. Second, the rule must “implement, interpret, or make specific the law enforced or administered by [the agency], or govern [the agency’s] procedure.” (Morning Star Co. v. State Bd. of Equalization (2006) 38

Whether a particular standard or rule is a regulation requiring APA compliance depends on the facts of each case, considering the rule in question, and the applicable statutory scheme. Generally speaking, courts tend to readily find the need for such compliance. We understand that certain healing arts boards have already adopted regulations incorporating the uniform standards. (See, e.g., Cal. Code Regs., tit. 16, § 4147 [Board of Occupational Therapy].) This approach is understandable in light of the usually broad requirement that agency rules be adopted as regulations and, as noted below, may be required by other laws when they are implemented by the boards. Here, however, the wording and intent of section 315 indicate the Legislature did not intend that the initial act of formulating and adopting the uniform standards is within the purview of the formal APA rule-making process.

"The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law." (Bodell Const. Co. v. Trustees of California State University (1998) 62 Cal.App.4th 1508, 1515.) In determining that intent, courts "first examine the words of the statute itself. Under the so-called 'plain meaning' rule, courts seek to give the words employed by the Legislature their usual and ordinary meaning. If the language of the statute is clear and unambiguous, there is no need for construction. However, the 'plain meaning' rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose. If the terms of the statute provide no definitive answer, then courts may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history." (Ibid. [citations omitted].) Courts "must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." (Ibid. [citation omitted].) "The legislative purpose will not be sacrificed to a literal construction of any part of the statute." (Ibid.)

In Paleski v. State Department of Health Services (2006) 144 Cal.App.4th 713, the Court of Appeal applied these rules of statutory construction and found that the challenged agency criteria were not required to be adopted as regulations under the APA. (Id. at pp. 728-729.) In Paleski, plaintiff challenged an agency's criteria for the prescription of certain drugs because the department had not promulgated them in compliance with the APA. (Ibid.) The statute, however, expressly authorized the criteria to be effectuated by publishing them in a manual. (Ibid.) According to the court, the "necessary effect" of this language was that the Legislature did not intend for the broader notice procedure of the APA to apply when the agency issued the criteria. (Ibid.)

Similar reasoning should apply here. Under the plain meaning of section 315, SACC was legislatively established to create uniform standards to be used by the healing arts boards when addressing licensees with substance abuse problems. (Bus. & Prof. Code, § 315, subd. (a).) The intent of the legislation was to protect the public and to ensure that minimum standards are met and to ensure uniformity among the standards established throughout the healing arts
licensing boards under the Department of Consumer affairs. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.) In formulating these uniform standards, SACC was subject to the Bagley-Keene Act, which requires noticed public meetings. Many roundtable discussions were held on the draft uniform standards, including public vetting and public comments. In that way, the affected community learned about the standards and had the opportunity to comment. This is a prime requirement and purpose of the APA rule-making process (see Gov. Code, § 11343 et seq.), but it has already been fulfilled by the procedures set forth in section 315. To now require SACC to repeat that process by promulgating the standards as regulations would make little sense and be duplicative.

Nor does the process for the formulation of the standards set forth in section 315 comport with the other purposes and procedures of the APA. During the APA rule-making process, an agency must provide various reasons, justifications, analyses, and supporting evidence for the proposed regulation. (Gov. Code, § 11346.2.) Those provisions and other provisions of the APA are intended to address the proliferation, content, and effect of regulations proposed by administrative agencies. (Id. §§ 11340, 11340.1.) Here, the agency is not proposing to adopt the uniform standards. The Legislature has required that the standards adopted by SACC, be uniform, and be used by the boards. Given this statutory mandate that they be implemented, subjecting the uniform standards to substantive review under the APA again makes little sense.

1b. The SACC would not be the rule-making entity, even if the uniform standards would have to be adopted as regulations.

Even assuming that APA compliance was required under section 315, it is doubtful that SACC would carry the responsibility to adopt regulations. The second component of a regulation requires that the rule must “implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency’s] procedure.” (Morning Star Co., supra, 38 Cal.4th at p. 333.) Here, SACC was mandated to create the uniform standards to be used by separate boards; the SACC’s creation of the uniform standards does not implement,

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1 Even though the standards do not have to be promulgated as regulations by SACC under section 315, this does not mean that certain regulations would not arguably be required on the part of some or all of the boards under other statutory schemes, such as the laws applicable to a particular board or the APA’s provisions on quasi-adjudicatory proceedings. This type of analysis would require a fact specific, case-by-case study of each board’s practices and its regulatory scheme and may include consideration of: (1) whether a board’s statutory authority requires the adoption of regulations related to actions against substance-abusing licensees, (2) whether current regulations conflict with the standards, and (3) whether in an administrative adjudicative setting, the standards are considered “penalties” and thus must be adopted as regulations under section 11425.50, subdivision (e), of the Government Code.
interpret, or make any law more specific. (Bus. & Prof. Code, § 315, subds. (a), (c).) The only express statutory role of the SACC is to determine the uniform standards in the first place.\footnote{The SACC is a committee formed by various executive officers of healing arts boards and other public officials formed within the Department of Consumer Affairs. (Bus. & Prof. Code, § 315, subds. (a).)}

The boards are then required to use and apply the standards and have much clearer authority to adopt regulations. "Each of the boards [within the Department of Consumer Affairs] exists as a separate unit, and has the function of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and hold hearings for the revocation of licenses, and the imposing of penalties following such hearings, in so far as these powers are given by statute to each respective board." (Bus. & Prof. Code, § 108.)

The legislative history for section 315 also supports this conclusion. According to its author, section 315 was adopted to protect the public by ensuring that, at a minimum, a set of best practices or standards were adopted by health care related boards to deal with practitioners with alcohol or drug problems. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008, emphasis added.)\footnote{As discussed shortly, the legislative history for follow-up legislation similarly explains that its purpose was to provide statutory authority for some healing arts boards to issue regulations to implement certain of the uniform standards. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.)} Practically speaking, it would be difficult for the SACC (or the Department of Consumer Affairs) to draft regulations applicable to all boards, given that they are unique and deal with different subject areas, unless such regulations were adopted wholesale, on a one-size-fits-all basis. As explained below, while the healing arts boards must use the standards, they only have to use the ones that apply to their procedures.

Thus, while section 315 does not require regulations to initially adopt the standards, the boards (and not SACC) would more reasonably be tasked with this responsibility.

2. The healing arts boards must use the uniform standards to the extent that they apply.

The original language of section 315 is clear that the standards must be used. (Bus. & Prof. Code, § 315, subd. (a) ["uniform standards that will be used by healing arts boards"], subd. (b) ["uniform standards . . . that each healing arts board shall use in dealing with substance-abusing licenses"].) Legislative Counsel was asked to opine on whether subsequent legislation (Bus. & Prof. Code, § 315.4) somehow made these uniform standards discretionary. We agree with
Legislative Counsel's conclusion that section 315.4 did not make the uniform standards optional. (Oct. 27, 2011, Letter, p. 9.)

Section 315.4 was enacted two years after section 315, and provides that that the healing arts boards, as described in section 315 and with the exception of the Board of Registered Nursing, "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315." (Bus. & Prof. Code, § 315.4, subd. (a); Stats. 2010, ch. 517, (SB 1172).) If a board adopts such regulations, there is nothing to indicate that use of uniform standards created under section 315 is optional. Such an interpretation would be contrary to the legislative intent. Section 314.5 was enacted for the limited purpose to give boards the authority to order a licensee to cease practice, as this was not provided for in section 315. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) By no means was the intent to transform the mandatory uniform standards of section 315 into optional suggestions. As the author explains:

Although most of the adopted guidelines do not need additional statutes for implementation, there are a few changes that must be statutorily adopted to fully implement these standards. [¶] This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation.

(Senate Third Reading, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended June 22, 2010.)

In addition, some specific uniform standards themselves recognize a board's discretion whether to order a particular action in the first place. (See e.g. Uniform Standard # 1 ["If a healing arts board orders a licensee . . . to undergo a clinical diagnosis evaluation, the following applies: . . . “].) The standards must be applied, however, if a board undertakes a particular practice or orders an action covered by the standards. A determination regarding a board's specific application (or not) of certain uniform standards would have to be based on a fact specific, case-by-case review of each board and its regulatory scheme. However, once a board implements a procedure covered by the uniform standards, it cannot disregard the applicable uniform standard because it disagrees with the standard's substance.

Conclusion

For the reasons stated above, in our view, section 315 can be read to preclude the necessity to adopt regulations when the uniform standards are issued initially. And even if regulations were required under section 315, SACC would not be tasked with this responsibility. We also
believe that the healing arts boards must use the uniform standards where an agency undertakes an action covered by the standards.

Please feel free to contact me if you have any questions or would like to discuss the above.

:KAL

cc: Peter K. Southworth, Supervising Deputy Attorney General
October 27, 2011

Honorable Curren D. Price Jr.
Room 2053, State Capitol

HEALING ARTS BOARDS: ADOPTION OF UNIFORM STANDARDS - #1124437

Dear Senator Price:

You have asked two questions with regard to the adoption of uniform standards by the Substance Abuse Coordination Committee pursuant to Section 315 of the Business and Professions Code. You have asked whether the Substance Abuse Coordination Committee is required to adopt the uniform standards pursuant to the rulemaking procedures under the Administrative Procedure Act (Ch. 3,5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.). You have also asked, if the uniform standards are properly adopted by the Substance Abuse Coordination Committee, whether the healing arts boards are required to implement them.

By way of background, Section 315 of the Business and Professions Code provides as follows:

"315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

All further section references are to the Business and Professions Code, unless otherwise referenced."
"(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

"(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

"(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

"(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in paragraph (1) and any treatment recommended by the evaluator described in paragraph (1) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

"(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

"(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the rest standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

"(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

"(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

"(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

"(8) Procedures to be followed when a licensee tests positive for a banned substance.

"(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.
“(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a deferred prosecution stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

“(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

“(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

“(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor’s approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee’s termination from the program and referral to enforcement.

“(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

“(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor’s performance in adhering to the standards adopted by the committee.

“(16) Measurable criteria and standards to determine whether each board’s method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.” (Emphasis added.)

Thus, the Legislature has established in the Department of Consumer Affairs (hereafter department) the Substance Abuse Coordination Committee (subd. (a), Sec. 315, hereafter committee). The committee is comprised of the executive officers of each healing arts board within the department, the State Board of Chiropractic Examiners, and the

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4The department’s healing arts boards are those boards established under Division 2 (commencing with Section 500) to license and regulate practitioners of the healing arts. Those boards include, among others, the Dental Board of California, the Medical Board of California, the Veterinary Medical Board, and the Board of Registered Nursing.
Osteopathic Medical Board of California (hereafter, collectively, healing arts boards), and a
designee of the State Department of Alcohol and Drug Programs (Ibid.). The Director of
Consumer Affairs chairs the committee and is authorized to invite individuals or stakeholders
who have particular expertise in the area of substance abuse to advise the committee (Ibid.).

The committee is required to formulate uniform and specific standards in each of
16 areas provided by the Legislature, but otherwise has discretion to adopt the uniform
standards each healing arts board shall use in dealing with substance-abusing licensees
(subd. (c), Sec. 315). The committee adopted its initial set of uniform standards in April
2010, and revised those initial standards as recently as April 2011. Although the committee
has adopted the uniform standards pursuant to its own procedures, it has yet to adopt those
standards pursuant to the rulemaking procedures of the Administrative Procedure Act
(Ch. 3.5 (commencing with Sec. 11340), Pts. 1, Div. 3, Title 2, Gov. C.; hereafter APA).

You have asked whether the committee is required to adopt the uniform standards
pursuant to the rulemaking procedures of the APA.

The APA establishes basic minimum procedural requirements for the adoption,
amendment, or repeal of administrative regulations by state agencies (subd. (a), Sec. 11346,
Gov. C.). The APA is applicable to the exercise of any quasi-legislative power conferred by
any statute (Ibid.). Quasi-legislative powers consist of the authority to make rules and
regulations having the force and effect of law (California Advocates for Nursing Home Reform
be superseded or modified by any subsequent legislation except to the extent that the
legislation does so expressly (subd. (a), Sec. 11346, Gov. C.).

The term "regulation" is defined for purposes of the APA to mean "every rule,
regulation, order, or standard of general application or the amendment, supplement, or
revision of any rule, regulation, order, or standard adopted by any state agency to implement,
interpret, or make specific the law enforced or administered by it, or to govern its procedure"
(Sec. 11342.600, Gov. C.; emphasis added). The APA provides that a state agency shall not
issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual,
instruction, order, standard of general application, or other rule, which is a regulation under
the APA, unless properly adopted under the procedures set forth in the APA, and the Office
of Administrative Law is empowered to determine whether any such guideline, criterion,
bulletin, manual, instruction, order, standard of general application, or other rule is a
regulation under the APA (Sec. 11340.5, Gov. C.).

In Tidewater Marine Western, Inc. v. Bradshaw (1996) 14 Cal.4th 557, 571 (hereafter
"Tidewater"), the California Supreme Court found as follows:

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1 See http://www.dca.ca.gov/about_dca/sacc/index.shtml (as of September 20,
2011).
"A regulation subject to the APA thus has two principal identifying characteristics. (See Union of American Physicians & Dentists v. Kizer (1990) 223 Cal.App.3d 490, 497 [272 Cal.Rptr. 886] [describing two-part test of the Office of Administrative Law].) First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. (Roth v. Department of Veterans Affairs (1980) 110 Cal.App.3d 622, 630 [167 Cal.Rptr. 552].) Second, the rule must 'implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure.' (Gov. Code, § 11342, subd. (g).)"

If a policy or procedure falls within the definition of a "regulation" within the meaning of the APA, the adopting agency must comply with the procedures for formalizing the regulation, which include public notice and approval by the Office of Administrative Law (County of Butte v. Emergency Medical Services Authority (2010) 187 Cal.App.4th 1175, 1200). The Office of Administrative Law is required to review all regulations adopted pursuant to the APA and to make its determinations according to specified standards that include, among other things, assessing the necessity for the regulation and the regulation's consistency with the agency's statutory obligation to implement a statute (subd. (a), Sec. 11349.1, Gov. C.).

Applying these principles to the question presented, the uniform standards are subject to the rulemaking procedures of the APA if the following criteria are met: (1) Section 315 does not expressly preclude application of the APA, (2) the committee is a state agency under the APA, (3) the uniform standards are regulations subject to the APA, and (4) no exemption applies under the APA.

With respect to the first criterion, Section 315 is silent on the application of the APA. Thus, Section 315 does not expressly preclude application of the APA, and the APA will apply to any regulation adopted under Section 315.

We turn next to the second criterion, and whether the committee is an "agency" for purposes of the APA. The word "agency" is defined, for purposes of the APA, by several separate provisions of law. For purposes of the rulemaking procedures of the APA, "agency" is defined to mean a state agency (Sec. 11342.520, Gov. C.). That reference to state agency is defined elsewhere in the Government Code to include every state office, officer, department, division, bureau, board, and commission (subd. (a), Sec. 11000, Gov. C.). The APA does not apply to an agency in the judicial or legislative branch of the state government (subd. (a), Sec. 11340.9, Gov. C.).

Along those lines, the APA is applicable to the exercise of any quasi-legislative power conferred by any statute (subd. (a), Sec. 11346, Gov. C.). Quasi-legislative powers consist of the authority to make rules and regulations having the force and effect of law (California Advocates, supra, at p. 517). Thus, for purposes of our analysis, we think that an "agency" means any state office, officer, department, division, bureau, board, or commission that exercises quasi-legislative powers.
Here, the committee is a state office comprised of executive officers of the healing arts boards and the Director of Consumer Affairs. Although the Legislature has set forth 16 areas in which the committee is required to adopt standards, the committee itself is required to exercise quasi-legislative powers and adopt uniform standards within those areas. Those standards shall have the force and effect of law, since the healing arts boards, as discussed more extensively below, are required to use the standards in dealing with substance-abusing licensees and the standards are required to govern matters such as when a licensee is temporarily removed from practice or subject to drug testing or work monitoring (paras. (2), (4), and (7), subd. (c), Sec. 315). Accordingly, we think the committee is an agency to which the APA applies.

As to the third criterion, two elements must be met for the uniform standards at issue to be a regulation: they must apply generally and they must implement, interpret, or make specific a law enforced or administered by the agency or that governs its procedures (Tidewater, supra, at p. 571; Sec. 11342.600, Gov. C.). Section 315 requires the committee to formulate uniform and specific standards in specified areas that each healing arts board within the department shall use when dealing with substance-abusing licensees, whether or not the board chooses to have a formal diversion program. The uniform standards will not be limited in application to particular instances or individuals but, instead, will apply generally to those licensees. Further, under this statutory scheme, the uniform standards will implement Section 315 and will be enforced and administered by, and will govern the procedures of, each healing arts board that is a member of the committee. Thus, the uniform standards are, in our view, a regulation under the APA.

Lastly, we turn to the fourth criterion, and whether the regulation is exempt from the APA. Certain policies and procedures are expressly exempted by statute from the requirement that they be adopted as regulations pursuant to the APA. In that regard, Section 11340.9 of the Government Code provides as follows:

"11340.9. This chapter does not apply to any of the following:
(a) An agency in the judicial or legislative branch of the state government.
(b) A legal ruling of counsel issued by the Franchise Tax Board or State Board of Equalization.
(c) A form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.
(d) A regulation that relates only to the internal management of the state agency.
(e) A regulation that establishes criteria or guidelines to be used by the staff of an agency in performing an audit, investigation, examination, or inspection, settling a commercial dispute, negotiating a commercial
arrangement, or in the defense, prosecution, or settlement of a case, or if disclosure of the criteria or guidelines would do any of the following:

"(a) Enable a law violator to avoid detection.

"(b) Facilitate disregard of requirements imposed by law.

"(c) Give clearly improper advantage to a person who is in an adverse position to the state.

"(d) A regulation that embodies the only legally tenable interpretation of a provision of law.

"(2) A regulation that establishes or fixes rates, prices, or tariffs.

"(3) A regulation that relates to the use of public works, including streets and highways, when the effect of the regulation is indicated to the public by means of signs or signals or when the regulation determines uniform standards and specifications for official traffic control devices pursuant to Section 21400 of the Vehicle Code.

"(v) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state."

None of the exemptions contained in the APA can be reasonably construed to apply to the committee or the uniform standards to be used by the healing arts boards. In addition, we are aware of no other applicable exemption.

Thus, because all four of the criteria are met, it is our opinion that the Substance Abuse Coordination Committee is required to adopt the uniform standards pursuant to the rulemaking procedures under the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pr. 1, Div. 3, Title 2, Gov. C.).

Having reached this conclusion, we now turn to whether the healing arts boards are required to use the uniform standards if those standards are properly adopted. In addressing that question, we apply certain established rules of statutory construction. To ascertain the meaning of a statute, we begin with the language in which the statute is framed (Lory l. v. Workmen's Comp. Appeals Bd. (1974) 12 Cal.3d 434, 438; Visalia School Dist. v. Workers' Comp. Appeals Bd. (1995) 40 Cal.App.4th 1211, 1220). Significance should be given to every word, and construction making some words surplusage is to be avoided (Lambert Steel Co. v. Heller Financial, Inc. (1993) 16 Cal.App.4th 1034, 1040). In addition, effect should be given to statutes according to the usual, ordinary import of the language employed in framing them (Dobbs v. Workers' Comp. Appeals Bd. (1993) 5 Cal.4th 382, 388).

As set forth above, subdivision (c) of Section 315 provides that "the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program" (emphasis added). Section 19 provides that "shall" is mandatory and "may" is permissive. The word "may" is ordinarily construed as permissive, whereas the word "shall" is ordinarily construed as mandatory (Common Cause v. Board of Supervisors (1989) 49 Cal.3d 432, 443).
Here, in Section 315, the Legislature uses the term "shall" rather than "may" in providing that each healing arts board "shall use" the specific and uniform standards adopted by the committee when dealing with substance-abusing licensees. The Legislature uses the term "shall use" as compared to "shall consider," "may consider," or "may use." The Legislature's use of the term "shall" indicates that the healing arts boards are required to use the standards adopted by the committee rather than being provided the discretion to do so. Moreover, as employed in this context, the word "use" implies that the healing arts boards must implement and apply those standards rather than merely considering them. Finally, the use of the term "uniform" suggests that the Legislature intended each board to apply the same standards. If the healing arts boards were not required to use the standards as adopted by the committee, the standards employed by these boards would vary rather than being "uniform."

Notwithstanding the plain meaning of Section 315, one could argue that the enactment of Section 315.4 indicates that the Legislature intended that implementation of the uniform standards by the boards be discretionary. Section 315.4, which was added by Senate Bill No. 1172, of the 2009-10 Regular Session (Ch. 517, Stats. 2010; hereafter S.B. 1172), provides that a healing arts board "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315."

Section 315.4 could be read to imply that a healing arts board is not required to implement those uniform standards because the board was given discretion to adopt the regulations that would allow that board to implement the standards, if necessary.

It is a maxim of statutory construction that a statute is to be construed so as to harmonize its various parts within the legislative purpose of the statute as a whole (Wells v. Marina City Properties, Inc. (1981) 29 Cal.3d 781, 788). As discussed above, we believe that the plain meaning of Section 315 requires the healing arts boards to implement the uniform standards adopted by the committee. Thus, whether Section 315.4 indicates, to the contrary, that the Legislature intended the boards to have discretion in that regard depends upon whether there is a rational basis for harmonizing the two statutes.

In harmonizing Sections 315 and 315.4, we note that S.B. 1172 did not make any changes to Section 315, such as changing the term "shall" to "may" in subdivision (c) of Section 315 or deleting any subdivisions of Section 315. S.B. 1172 did not diminish the scope of the authority provided to the committee to adopt the uniform standards. In fact, the analysis of the Senate Committee on Business, Professions and Economic Development for S.B. 1172, dated April 19, 2010 (hereafter committee analysis), describes the purpose of S.B. 1172 and the enactment of Section 315.4, as follows:

"The Author points out that pursuant to SB 1441 (Ridley-Thomas, Chapter 948, Statutes of 2008), the DCA was required to adopt uniform guidelines on sixteen specific standards that would apply to substance abusing health care licensees, regardless of whether a board has a diversion program. Although most of the adopted guidelines do not need additional statutes for
implementation, there are a couple of changes that must be statutorily adopted to fully implement these standards. This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation.” (Committee analysis, at p. 4.)

The committee analysis further provides that the purpose of S.B. 1172 was to grant specific authority to implement those standards and “provide for the full implementation of the Uniform Standards” (committee analysis, at p. 11). The committee analysis at no time implies that the Legislature intended the Section 315 uniform standards to be revised or repealed by S.B. 1172 or that, in enacting Section 315.4, the Legislature intended that the implementation of the uniform standards be subject to the discretion of each healing arts board.

Thus, in our view, Section 315.4 may be reasonably construed in a manner that harmonizes it with Section 315. Specifically, we think that the intent of the Legislature in enacting Section 315.4 was not to make the uniform standards discretionary but to “provide for the full implementation of the Uniform Standards” by providing the authority to adopt regulations where the Legislature believed that further statutory authority was needed. Accordingly, we think implementation by the various healing arts boards of the uniform standards adopted under Section 315 is mandatory.

*Although Section 108 and Division 2 (commencing with Section 500) authorize the healing arts boards to set standards and adopt regulations (see, for example, Secs. 1224, 1614, 2018, 2531.95, 2615, 2715, 2854, 2930, 3025, 3510, and 3546), it is an axiom of statutory construction that a particular or specific provision takes precedence over a conflicting general provision (Sec. 1859, C.C.R.P.; Agricultural Labor Relations Bd. v. Superior Court (1976) 16 Cal.3d 392, 420, app. dism. Kube v. Agricultural Relations Bd. (1976) 429 U.S. 802; see also Sec. 3534, Civ. C.). Thus, in our view, the specific requirement under Section 315 that the uniform standards be adopted supersedes any general provision authorizing the boards to set standards and adopt regulations.*
Thus, it is our opinion that, if the uniform standards are properly adopted by the Substance Abuse Coordination Committee, the healing arts boards are required to implement them.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By
Lisa M. Plummer
Deputy Legislative Counsel
MEMORANDUM

DATE April 5, 2012

TO ALL HEALING ARTS BOARDS

FROM DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

SUBJECT Opinion Regarding Uniform Standards for Substance-Abusing Licensees (SB 1441)

This memo addresses a number of questions that have been raised concerning the discretion of healing arts boards, with respect to the Uniform Standards for Substance-Abusing Healing Arts Licensees ("Uniform Standards") that were formulated by the Substance Abuse Coordination Committee and mandated by Business and Professions Code section 315. Previously, there have been discussions and advice rendered, opining that the boards retain the discretion to modify the Uniform Standards. This opinion, largely influenced by the fact that the rulemaking process necessarily involves the exercise of a board's discretion, has been followed by a number of boards as they completed the regulatory process.

Two opinions, one issued by the Legislative Counsel Bureau ("Legislative Counsel") dated October 27, 2011, and an informal legal opinion, rendered by the Government Law Section of the Office of the Attorney General ("Attorney General"), dated February 29, 2012, have been issued and address the discretion of the boards, in adopting the Uniform Standards. This memo is to advise the healing arts boards of this office's opinion regarding the questions raised, after a review of these two opinions. A copy of each opinion is attached for your convenience.
Questions Presented

1. Do the healing arts boards retain the discretion to modify the content of the specific terms or conditions of probation that make up the Uniform Standards?

Both Legislative Counsel and the Attorney General concluded that the healing arts boards do not have the discretion to modify the content of the specific terms or conditions of probation that make up the Uniform Standards. We concur with that conclusion.

2. Do the healing arts boards have the discretion to determine which of the Uniform Standards apply in a particular case?

Legislative Counsel opined that, unless the Uniform Standards specifically so provide, all of the Uniform Standards must be applied to cases involving substance-abusing licensees, as it was their belief that the Legislative intent was to “provide for the full implementation of the Uniform Standards.” The Attorney General agreed with Legislative Counsel. Following our review and analysis of Business and Professions Code Section 315, we concur with both the Office of the Attorney General and the Legislative Counsel.

3. Is the Substance Abuse Coordination Committee (SACC) the entity with rulemaking authority over the uniform standards to be used by the healing arts boards?

The Legislative Counsel concluded that the SACC had the authority to promulgate regulations mandating that the boards implement the Uniform Standards. However, the Office of the Attorney General disagreed and concluded that the SACC was not vested with the authority to adopt regulations implementing the uniform standards. We agree with the Office of the Attorney General. It is our opinion that the authority to promulgate the regulations necessary to implement the Uniform Standards, lies with the individual boards that implement, interpret or make specific, the laws administered by those boards. As the SACC is limited to the creation or formulation of the uniform standards, but is not authorized to implement the laws of the healing arts boards, it does not have authority to adopt regulations to implement those standards. Consequently, we agree with the Attorney General’s opinion that the SACC is not the rule-making entity with respect to the Uniform Standards, and therefore has no authority to adopt the Uniform Standards as regulations.

It is our recommendation that healing arts boards move forward as soon as possible to implement the mandate of Business and Professions Code section 315, as it relates to
the Uniform Standards. Some of the standards are appropriate for inclusion in an agency's disciplinary guidelines, which necessarily will involve the regulatory process. Others are administrative in nature and not appropriate for inclusion in the disciplinary guidelines. For example, Uniform Standard No. 16 which sets forth reporting requirements would not be appropriate for inclusion in disciplinary guidelines.

Please work with your assigned legal counsel to determine how best to implement the Uniform Standards. This should include a discussion as to whether: (1) the Uniform Standards should be placed in a regulation separate from the disciplinary guidelines; (2) the implementing regulation should include a definition of (or criteria by which to determine) what constitutes a "substance-abusing licensee."

It is hopeful that the foregoing information addresses your concerns with respect to the implementation of the mandatory uniform standards.

Attachments

c: Denise Brown, DCA Director
Awet Kidane, DCA Chief Deputy Director
DCA Legal Affairs Attorneys
Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by Department of Consumer Affairs, Substance Abuse Coordination Committee

Brian J. Stiger, Director
April 2011
Substance Abuse Coordination Committee

Brian Stiger, Chair
Director, Department of Consumer Affairs

Elinore F. McCance-Katz, M.D., Ph. D.
CA Department of Alcohol & Drug Programs

Donald Krpan, D.O.
Osteopathic Medical Board of California

Francine Davies
Naturopathic Medicine Committee

Virginia Herold
California State Board of Pharmacy

Steve Hartzell
Physical Therapy Board of California

Elberta Portman
Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

Robert Kahane
Board of Psychology

Louise Bailey
Board of Registered Nursing

Stephanie Nunez
Respiratory Care Board of California

Annemarie Del Mugnaio
Speech-Language Pathology & Audiology & Hearing Aid Dispenser Board

Susan Geranen
Veterinary Medical Board

Janelle Wedge
Acupuncture Board

Kim Madsen
California Board of Behavioral Sciences

Robert Puleo
Board of Chiropractic Examiners

Lori Hubble
Dental Hygiene Committee of California

Richard De Cuir
Dental Board of California

Linda Whitney
Medical Board of California

Heather Martin
California Board of Occupational Therapy

Mona Maggio
California State Board of Optometry

Teresa Bello-Jones
Board of Vocational Nursing and Psychiatric Technicians
Table of Contents

<table>
<thead>
<tr>
<th>Uniform Standard</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uniform Standard #1</td>
<td>4</td>
</tr>
<tr>
<td>Uniform Standard #2</td>
<td>6</td>
</tr>
<tr>
<td>Uniform Standard #3</td>
<td>7</td>
</tr>
<tr>
<td>Uniform Standard #4</td>
<td>8</td>
</tr>
<tr>
<td>Uniform Standard #5</td>
<td>12</td>
</tr>
<tr>
<td>Uniform Standard #6</td>
<td>13</td>
</tr>
<tr>
<td>Uniform Standard #7</td>
<td>14</td>
</tr>
<tr>
<td>Uniform Standard #8</td>
<td>16</td>
</tr>
<tr>
<td>Uniform Standard #9</td>
<td>17</td>
</tr>
<tr>
<td>Uniform Standard #10</td>
<td>18</td>
</tr>
<tr>
<td>Uniform Standard #11</td>
<td>20</td>
</tr>
<tr>
<td>Uniform Standard #12</td>
<td>21</td>
</tr>
<tr>
<td>Uniform Standard #13</td>
<td>22</td>
</tr>
<tr>
<td>Uniform Standard #14</td>
<td>26</td>
</tr>
<tr>
<td>Uniform Standard #15</td>
<td>27</td>
</tr>
<tr>
<td>Uniform Standard #16</td>
<td>28</td>
</tr>
</tbody>
</table>
#1 SENATE BILL 1441 REQUIREMENT

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

#1 Uniform Standard

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
   - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
   - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
   - is approved by the board.

2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

3. The clinical diagnostic evaluation report shall:
   - set forth, in the evaluator’s opinion, whether the licensee has a substance abuse problem;
   - set forth, in the evaluator’s opinion, whether the licensee is a threat to himself/herself or others; and,
   - set forth, in the evaluator’s opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee’s rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.
For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.
#2 Senate Bill 1441 Requirement

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

#2 Uniform Standard

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.

2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine whether or not the licensee is safe to return to either part-time or full-time practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee’s history;
- the documented length of sobriety/time that has elapsed since substance use;
- the scope and pattern of use;
- the treatment history;
- the licensee’s medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.
#3 SENATE BILL 1441 REQUIREMENT

Specific requirements that govern the ability of the licensing board to communicate with the licensee’s employer about the licensee’s status or condition.

#3 Uniform Standard

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee’s work status, performance, and monitoring.
#4 Senate Bill 1441 Requirement

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

#4 Uniform Standard

The following standards shall govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

## Testing Frequency Schedule

A board may order a licensee to drug test at any time. Additionally, each licensee shall be tested randomly in accordance with the schedule below:

<table>
<thead>
<tr>
<th>Level</th>
<th>Segments of Probation/Diversion</th>
<th>Minimum Range of Number of Random Tests</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Year 1</td>
<td>52-104 per year</td>
</tr>
<tr>
<td>II*</td>
<td>Year 2+</td>
<td>36-104 per year</td>
</tr>
</tbody>
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*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board’s testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

### Exceptions to Testing Frequency Schedule

1. **Previous Testing/Soberity**
   In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing
frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT
An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee’s way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD
A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the licensee’s board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING
A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the board upon the licensee’s return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED
In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.
Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

**PETITIONS FOR REINSTATEMENT**

Nothing herein shall limit a board’s authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

**OUTCOMES AND AMENDMENTS**

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

**Historical Data - Two Years Prior to Implementation of Standard**

Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to
appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

Post Implementation Data- Three Years
Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

Data Collection
The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

Probationer/Diversion Participant Unique Identifier
License Type
Probation/Diversion Effective Date
General Range of Testing Frequency by/for Each Probationer/Diversion Participant
Dates Testing Requested
Dates Tested
Identify the Entity that Performed Each Test
Dates Tested Positive
Dates Contractor (if applicable) was informed of Positive Test
Dates Board was informed of Positive Test
Dates of Questionable Tests (e.g. dilute, high levels)
Date Contractor Notified Board of Questionable Test
Identify Substances Detected or Questionably Detected
Dates Failed to Appear
Date Contractor Notified Board of Failed to Appear
Dates Failed to Call In for Testing
Date Contractor Notified Board of Failed to Call In for Testing
Dates Failed to Pay for Testing
Date(s) Removed/Suspended from Practice (identify which)
Final Outcome and Effective Date (if applicable)
#5 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

#5 Uniform Standard

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee’s history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee’s treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.

2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.

3. The group meeting facilitator shall provide to the board a signed document showing the licensee’s name, the group name, the date and location of the meeting, the licensee’s attendance, and the licensee’s level of participation and progress.

4. The facilitator shall report any unexcused absence within 24 hours.
#6 SENATE BILL 1441 REQUIREMENT

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#6 Uniform Standard

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee’s history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee’s treatment history;
- licensee’s medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.
#7 SENATE BILL 1441 REQUIREMENT

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

#7 Uniform Standard

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee’s employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee’s worksite monitor be an employee of the licensee.

2. The worksite monitor’s license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.

3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee’s disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.

5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
   
   a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.

   b) Interview other staff in the office regarding the licensee’s behavior, if applicable.

   c) Review the licensee’s work attendance.
Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee’s employer within one (1) business day of occurrence. If occurrence is not during the board’s normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.

2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
   - the licensee’s name;
   - license number;
   - worksite monitor’s name and signature;
   - worksite monitor’s license number;
   - worksite location(s);
   - dates licensee had face-to-face contact with monitor;
   - staff interviewed, if applicable;
   - attendance report;
   - any change in behavior and/or personal habits;
   - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.
#8 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee tests positive for a banned substance.

#8 Uniform Standard

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;

2. The board shall contact the licensee and instruct the licensee to leave work; and

3. The board shall notify the licensee’s employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;

2. Communicate with the licensee and/or any physician who is treating the licensee; and

3. Communicate with any treatment provider, including group facilitator/s.
#9 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.
#10 SENATE BILL 1441 REQUIREMENT

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

#10 Uniform Standard

Major Violations include, but are not limited to:

1. Failure to complete a board-ordered program;

2. Failure to undergo a required clinical diagnostic evaluation;

3. Multiple minor violations;

4. Treating patients while under the influence of drugs/alcohol;

5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;

6. Failure to obtain biological testing for substance abuse;

7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;

8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
   a) the licensee must undergo a new clinical diagnostic evaluation, and
   b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.

2. Termination of a contract/agreement.

3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.
**Minor Violations** include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

**Consequences** for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.
#11 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

#11 Uniform Standard

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.

2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse.

3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.
#12 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

#12 Uniform Standard

“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.

2. Demonstrated successful completion of recovery program, if required.

3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.

4. Demonstrated that he or she is able to practice safely.

5. Continuous sobriety for three (3) to five (5) years.
#13 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

#13 Uniform Standard

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.

2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

   (a) **Specimen Collectors:**

   (1) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.

   (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.

   (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.

   (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.

   (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.

   (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.
(7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.

(8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.

(9) Must undergo training as specified in Uniform Standard #4 (6).

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

(1) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;

(2) must be licensed or certified by the state or other nationally certified organization;

(3) must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;

(4) shall report any unexcused absence within 24 hours to the board, and,

(5) shall provide to the board a signed document showing the licensee’s name, the group name, the date and location of the meeting, the licensee’s attendance, and the licensee’s level of participation and progress.

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

(1) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee’s employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee’s worksite monitor be an employee of the licensee.

(2) The monitor’s licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no
monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.

(3) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

(4) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee’s disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.

2. The worksite monitor must adhere to the following required methods of monitoring the licensee:

   a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.

   b) Interview other staff in the office regarding the licensee’s behavior, if applicable.

   c) Review the licensee’s work attendance.

3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee’s employer within one (1) business day of occurrence. If occurrence is not during the board’s normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.

4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:

   • the licensee’s name;
   • license number;
   • worksite monitor’s name and signature;
   • worksite monitor’s license number;
   • worksite location(s);
   • dates licensee had face-to-face contact with monitor;
   • staff interviewed, if applicable;
   • attendance report;
   • any change in behavior and/or personal habits;
• any indicators that can lead to suspected substance abuse.

(d) **Treatment Providers**

Treatment facility staff and services must have:

(1) Licensure and/or accreditation by appropriate regulatory agencies;

(2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;

(3) Professional staff who are competent and experienced members of the clinical staff;

(4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;

(5) Means to provide treatment/progress documentation to the provider.

(e) **General Vendor Requirements**

The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

(1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.

(2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.

(3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.
#14 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

#14 Uniform Standard

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee’s participation in a diversion program.

- Licensee’s name;
- Whether the licensee’s practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.
**#15 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor’s performance in adhering to the standards adopted by the committee.

**#15 Uniform Standard**

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.

2. The audit must assess the vendor’s performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor’s monitoring services that would interfere with the board’s mandate of public protection.

3. The board and the department shall respond to the findings in the audit report.
#16 SENATE BILL 1441 Requirement

Measurable criteria and standards to determine whether each board’s method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

#16 Uniform Standard

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.
The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.

- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.
Senate Bill No. 1441

CHAPTER 548

An act to amend Sections 1695.1, 1695.5, 1695.6, 1697, 1698, 2361, 2365, 2366, 2367, 2369, 2663, 2665, 2666, 2770.1, 2770.7, 2770.8, 2770.11, 2770.12, 3501, 3534.1, 3534.3, 3534.4, 3534.9, and 4371 of, and to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of, the Business and Professions Code, relating to health care.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

LEGISLATIVE COUNSEL’S DIGEST


Existing law requires various healing arts licensing boards, including the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, the Osteopathic Medical Board of California, and the California State Board of Pharmacy to establish and administer diversion or recovery programs or diversion evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol, and gives the diversion evaluation committees certain duties related to termination of a licensee from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining completion of the program, and purging and destroying records, as specified.

Existing law requires the California State Board of Pharmacy to contract with one or more qualified contractors to administer the pharmacists recovery program and requires the board to review the pharmacists recovery program on a quarterly basis, as specified.

This bill would establish in the Department of Consumer Affairs the Substance Abuse Coordination Committee, which would be comprised of the executive officers of the department’s healing arts licensing boards, as specified, and a designee of the State Department of Alcohol Drug Programs. The bill would require the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board would be required to use in dealing with substance-abusing licensees. The bill would specify that the program managers of the diversion programs for the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, and the Osteopathic Medical Board of California, as designated by the executive officers of those entities, are responsible for certain duties, including, as specified, duties related to termination of a licensee from the diversion program, the review and evaluation of recommendations of the committee,
approving the designs of treatment programs, denying participation in the program, reviewing activities and performance of contractors, and determining completion of the program. The bill would also provide that diversion evaluation committees created by any of the specified boards or committees operate under the direction of the program manager of the diversion program, and would require those diversion evaluation committees to make certain recommendations. The bill would require the executive officer of the California State Board of Pharmacy to designate a program manager of the pharmacists recovery program, and would require the program manager to review the pharmacists recovery program quarterly and to work with the contractors, as specified. The bill would set forth provisions regarding entry of a registered nurse into the diversion program and the investigation and discipline of registered nurses who are in, or have been in, the diversion program, and would require registered nurses in the diversion program to sign an agreement of understanding regarding withdrawal or termination from the program, as specified.

The bill would specify that the diversion program responsibilities imposed on licensing boards under these provisions shall be considered current operating expenses of those boards.

*The people of the State of California do enact as follows:*

**SECTION 1.** The Legislature hereby finds and declares all of the following:

(a) Substance abuse is an increasing problem in the health care professions, where the impairment of a health care practitioner for even one moment can mean irreparable harm to a patient.

(b) Several health care licensing boards have “diversion programs” designed to identify substance-abusing licensees, direct them to treatment and monitoring, and return them to practice in a manner that will not endanger the public health and safety.

(c) Substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency. Patient protection is paramount.

(d) The diversion program of the Medical Board of California, created in 1981, has been subject to five external performance audits in its 27-year history and has failed all five audits, which uniformly concluded that the program has inadequately monitored substance-abusing physicians and has failed to promptly terminate from the program, and appropriately refer for discipline, physicians who do not comply with the terms and conditions of the program, thus placing patients at risk of harm.

(e) The medical board’s diversion program has failed to protect patients from substance-abusing physicians, and the medical board has properly decided to cease administering the program effective June 30, 2008.

(f) The administration of diversion programs created at other health care boards has been contracted to a series of private vendors, and none of those
vendors has ever been subject to a performance audit, such that it is not possible to determine whether those programs are effective in monitoring substance-abusing licensees and assisting them to recover from their addiction in the long term.

(g) Various health care licensing boards have inconsistent or nonexistent standards that guide the way they deal with substance-abusing licensees.

(h) Patients would be better protected from substance-abusing licensees if their regulatory boards agreed to and enforced consistent and uniform standards and best practices in dealing with substance-abusing licensees.

SEC. 2. It is the intent of the Legislature that:

(a) Pursuant to Section 156.1 of the Business and Professions Code and Section 8546.7 of the Government Code, that the Department of Consumer Affairs conduct a thorough audit of the effectiveness, efficiency, and overall performance of the vendor chosen by the department to manage diversion programs for substance-abusing licensees of health care licensing boards created in the Business and Professions Code, and make recommendations regarding the continuation of the programs and any changes or reforms required to ensure that individuals participating in the programs are appropriately monitored, and the public is protected from health care practitioners who are impaired due to alcohol or drug abuse or mental or physical illness.

(b) The audit shall identify, by type of board licensee, the percentage of self-referred participants, board-referred participants, and board-ordered participants. The audit shall describe in detail the diversion services provided by the vendor, including all aspects of bodily fluids testing, including, but not limited to, frequency of testing, randomness, method of notice to participants, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, such as whether the collection process is observed by the collector, location of testing, and average timeframe from the date of the test to the date the result of the test becomes available; group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by program participants; standards used in determining whether inpatient or outpatient treatment is necessary; and, if applicable, worksite monitoring requirements and standards. The audit shall review the timeliness of diversion services provided by the vendor; the thoroughness of documentation of treatment, aftercare, and monitoring services received by participants; and the thoroughness of documentation of the effectiveness of the treatment and aftercare services received by participants. In determining the effectiveness and efficiency of the vendor, the audit shall evaluate the vendor’s approval process for providers or contractors that provide diversion services, including specimen collectors, group meeting facilitators, and worksite monitors; the vendor’s disapproval of providers or contractors that fail to provide effective or timely diversion services; and the vendor’s promptness in notifying the boards when a participant fails to comply with the terms of his or her
diversion contract or the rules of the board’s program. The audit shall also recommend whether the vendor should be more closely monitored by the department, including whether the vendor should provide the department with periodic reports demonstrating the timeliness and thoroughness of documentation of noncompliance with diversion program contracts and regarding its approval and disapproval of providers and contractors that provide diversion services.

(c) The vendor and its staff shall cooperate with the department and shall provide data, information, and case files as requested by the department to perform all of his or her duties. The provision of confidential data, information, and case files from health care-related boards and the vendor to the department shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files. It is the Legislature’s intent that the audit be completed by June 30, 2010, and on subsequent years thereafter as determined by the department.

SEC. 3. Article 3.6 (commencing with Section 315) is added to Chapter 4 of Division 1 of the Business and Professions Code, to read:

Article 3.6. Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department’s healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic
evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee’s employer about the licensee’s status and condition.

(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomnicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

(8) Procedures to be followed when a licensee tests positive for a banned substance.

(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor’s approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors;
standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee’s termination from the program and referral to enforcement.

(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor’s performance in adhering to the standards adopted by the committee.

(16) Measurable criteria and standards to determine whether each board’s method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

SEC. 4. Section 1695.1 of the Business and Professions Code is amended to read:

1695.1. As used in this article:
(a) “Board” means the Board of Dental Examiners of California.
(b) “Committee” means a diversion evaluation committee created by this article.
(c) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 5. Section 1695.5 of the Business and Professions Code is amended to read:

1695.5. (a) The board shall establish criteria for the acceptance, denial, or termination of licensees in a diversion program. Unless ordered by the board as a condition of licentiate disciplinary probation, only those licensees who have voluntarily requested diversion treatment and supervision by a committee shall participate in a diversion program.

(b) A licentiate who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A licentiate under current investigation by the board may also request entry into the diversion program by contacting the board’s Diversion Program Manager. The Diversion Program Manager may refer the licentiate requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Dental Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Dental Practice Act or other statutes that would otherwise be the basis for discipline, may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a licentiate are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 1681 of the Business and Professions Code,
or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the licentiate is accepted into the board’s diversion program and successfully completes the requirements of the program. If the licentiate withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any licentiate for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All licentiates shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public’s health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any licentiate terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A licentiate who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 6. Section 1695.6 of the Business and Professions Code is amended to read:

1695.6. A committee created under this article operates under the direction of the program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licentiates who request to participate in the diversion program according to the guidelines prescribed by the board and to make recommendations. In making the recommendations, a committee shall consider the recommendations of any licentiates designated by the board to serve as consultants on the admission of the licentiate to the diversion program.

(b) To review and designate those treatment facilities to which licentiates in a diversion program may be referred.

(c) To receive and review information concerning a licentiate participating in the program.

(d) To consider in the case of each licentiate participating in a program whether he or she may with safety continue or resume the practice of dentistry.

(e) To perform such other related duties, under the direction of the board or program manager, as the board may by regulation require.
SEC. 7. Section 1697 of the Business and Professions Code is amended to read:

1697. Each licentiate who requests participation in a diversion program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager and to bear all costs related to the program, unless the cost is waived by the board. Any failure to comply with the provisions of a treatment program may result in termination of the licentiate’s participation in a program.

SEC. 8. Section 1698 of the Business and Professions Code is amended to read:

1698. (a) After the committee and the program manager in their discretion have determined that a licentiate has been rehabilitated and the diversion program is completed, the committee shall purge and destroy all records pertaining to the licentiate’s participation in a diversion program.

(b) Except as authorized by subdivision (f) of Section 1695.5, all board and committee records and records of proceedings pertaining to the treatment of a licentiate in a program shall be kept confidential and are not subject to discovery or subpoena.

SEC. 9. Section 2361 of the Business and Professions Code is amended to read:

2361. As used in this article:

(a) “Board” means the Osteopathic Medical Board of California.

(b) “Diversion program” means a treatment program created by this article for osteopathic physicians and surgeons whose competency may be threatened or diminished due to abuse of drugs or alcohol.

(c) “Committee” means a diversion evaluation committee created by this article.

(d) “Participant” means a California licensed osteopathic physician and surgeon.

(e) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 10. Section 2365 of the Business and Professions Code is amended to read:

2365. (a) The board shall establish criteria for the acceptance, denial, or termination of participants in the diversion program. Unless ordered by the board as a condition of disciplinary probation, only those participants who have voluntarily requested diversion treatment and supervision by a committee shall participate in the diversion program.

(b) A participant who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A participant under current investigation by the board may also request entry into the diversion program by contacting the board’s Diversion Program Manager. The Diversion Program Manager may refer the participant requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the
diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Medical Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Medical Practice Act or other statutes that would otherwise be the basis for discipline may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a participant are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 2239, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board may close the investigation without further action if the licentiate is accepted into the board’s diversion program and successfully completes the requirements of the program. If the participant withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation may be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any participant for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All participants shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public’s health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any participant terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A participant who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 11. Section 2366 of the Business and Professions Code is amended to read:

2366. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licensees who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.

(b) To review and designate those treatment facilities and services to which a participant in the program may be referred.

(c) To receive and review information concerning participants in the program.
(d) To consider whether each participant in the treatment program may safely continue or resume the practice of medicine.

(e) To prepare quarterly reports to be submitted to the board, which include, but are not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance and a cost analysis of the program.

(f) To promote the program to the public and within the profession, including providing all current licentiates with written information concerning the program.

(g) To perform such other related duties, under the direction of the board or the program manager, as the board may by regulation require.

SEC. 12. Section 2367 of the Business and Professions Code is amended to read:

2367. (a) Each licensee who requests participation in a treatment program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager. The committee shall inform each participant in the program of the procedures followed, the rights and responsibilities of the participant, and the possible results of noncompliance with the program. Any failure to comply with the treatment program may result in termination of participation.

(b) Participation in a program under this article shall not be a defense to any disciplinary action which may be taken by the board. Further, no provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program established pursuant to this article.

SEC. 13. Section 2369 of the Business and Professions Code is amended to read:

2369. (a) After the committee and the program manager, in their discretion, have determined that a participant has been rehabilitated and the program is completed, the committee shall purge and destroy all records pertaining to the participation in a treatment program.

(b) Except as authorized by subdivision (f) of Section 2365, all board and committee records and records of proceedings pertaining to the treatment of a participant in a program shall be confidential and are not subject to discovery or subpoena except in the case of discovery or subpoena in any criminal proceeding.

SEC. 14. Section 2663 of the Business and Professions Code is amended to read:

2663. The board shall establish and administer a diversion program for the rehabilitation of physical therapists and physical therapist assistants whose competency is impaired due to the abuse of drugs or alcohol. The board may contract with any other state agency or a private organization to perform its duties under this article. The board may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. Any diversion evaluation committee established by the board shall operate under the direction of the diversion program manager, as designated by the executive officer of the board. The program manager has
the primary responsibility to review and evaluate recommendations of the committee.

SEC. 15. Section 2665 of the Business and Professions Code is amended to read:

2665. Each diversion evaluation committee has the following duties and responsibilities:

(a) To evaluate physical therapists and physical therapist assistants who request participation in the program and to make recommendations. In making recommendations, the committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) To review and designation of treatment facilities to which physical therapists and physical therapist assistants in the diversion program may be referred.

(c) To receive and review information concerning physical therapists and physical therapist assistants participating in the program.

(d) Calling meetings as necessary to consider the requests of physical therapists and physical therapist assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the board.

(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of physical therapy.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physical therapist and physical therapist assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) Holding a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program’s progress, to prepare reports to be submitted to the board, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a diversion evaluation committee shall be considered a public employee. No board or diversion evaluation committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 16. Section 2666 of the Business and Professions Code is amended to read:

2666. (a) Criteria for acceptance into the diversion program shall include all of the following:

(1) The applicant shall be licensed as a physical therapist or approved as a physical therapist assistant by the board and shall be a resident of California.

(2) The applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice physical therapy safely or competently.
(3) The applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action.

(4) The applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program.

(5) The applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program.

(6) The applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

Any applicant may be denied participation in the program if the board, the program manager, or a diversion evaluation committee determines that the applicant will not substantially benefit from participation in the program or that the applicant’s participation in the program creates too great a risk to the public health, safety, or welfare.

(b) A participant may be terminated from the program for any of the following reasons:

(1) The participant has successfully completed the treatment program.

(2) The participant has failed to comply with the treatment program designated for him or her.

(3) The participant fails to meet any of the criteria set forth in subdivision (a) or (c).

(4) It is determined that the participant has not substantially benefited from participation in the program or that his or her continued participation in the program creates too great a risk to the public health, safety, or welfare. Whenever an applicant is denied participation in the program or a participant is terminated from the program for any reason other than the successful completion of the program, and it is determined that the continued practice of physical therapy by that individual creates too great a risk to the public health, safety, and welfare, that fact shall be reported to the executive officer of the board and all documents and information pertaining to and supporting that conclusion shall be provided to the executive officer. The matter may be referred for investigation and disciplinary action by the board. Each physical therapist or physical therapy assistant who requests participation in a diversion program shall agree to cooperate with the recovery program designed for him or her. Any failure to comply with that program may result in termination of participation in the program.

The diversion evaluation committee shall inform each participant in the program of the procedures followed in the program, of the rights and responsibilities of a physical therapist or physical therapist assistant in the program, and the possible results of noncompliance with the program.

(c) In addition to the criteria and causes set forth in subdivision (a), the board may set forth in its regulations additional criteria for admission to the program or causes for termination from the program.

SEC. 17. Section 2770.1 of the Business and Professions Code is amended to read:
2770.1. As used in this article:
(a) “Board” means the Board of Registered Nursing.
(b) “Committee” means a diversion evaluation committee created by this article.
(c) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 18. Section 2770.7 of the Business and Professions Code is amended to read:
2770.7. (a) The board shall establish criteria for the acceptance, denial, or termination of registered nurses in the diversion program. Only those registered nurses who have voluntarily requested to participate in the diversion program shall participate in the program.
(b) A registered nurse under current investigation by the board may request entry into the diversion program by contacting the board. Prior to authorizing a registered nurse to enter into the diversion program, the board may require the registered nurse under current investigation for any violations of this chapter or any other provision of this code to execute a statement of understanding that states that the registered nurse understands that his or her violations that would otherwise be the basis for discipline may still be investigated and may be the subject of disciplinary action.
(c) If the reasons for a current investigation of a registered nurse are based primarily on the self-administration of any controlled substance or dangerous drug or alcohol under Section 2762, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drug for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the registered nurse is accepted into the board’s diversion program and successfully completes the requirements of the program. If the registered nurse withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.
(d) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any registered nurse for any unprofessional conduct committed before, during, or after participation in the diversion program.
(e) All registered nurses shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when the licentiate presents a threat to the public’s health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.
(f) Any registered nurse terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the
diversion program. A registered nurse who has been under investigation by
the board and has been terminated from the diversion program by a diversion
evaluation committee shall be reported by the diversion evaluation committee
to the board.

SEC. 19. Section 2770.8 of the Business and Professions Code is
amended to read:

2770.8. A committee created under this article operates under the
direction of the diversion program manager. The program manager has the
primary responsibility to review and evaluate recommendations of the
committee. Each committee shall have the following duties and
responsibilities:

(a) To evaluate those registered nurses who request participation in the
program according to the guidelines prescribed by the board, and to make
recommendations.

(b) To review and designate those treatment services to which registered
nurses in a diversion program may be referred.

(c) To receive and review information concerning a registered nurse
participating in the program.

(d) To consider in the case of each registered nurse participating in a
program whether he or she may with safety continue or resume the practice
of nursing.

(e) To call meetings as necessary to consider the requests of registered
nurses to participate in a diversion program, and to consider reports regarding
registered nurses participating in a program.

(f) To make recommendations to the program manager regarding the
terms and conditions of the diversion agreement for each registered nurse
participating in the program, including treatment, supervision, and
monitoring requirements.

SEC. 20. Section 2770.11 of the Business and Professions Code is
amended to read:

2770.11. (a) Each registered nurse who requests participation in a
diversion program shall agree to cooperate with the rehabilitation program
designed by the committee and approved by the program manager. Any
failure to comply with the provisions of a rehabilitation program may result
in termination of the registered nurse’s participation in a program. The name
and license number of a registered nurse who is terminated for any reason,
other than successful completion, shall be reported to the board’s
enforcement program.

(b) If the program manager determines that a registered nurse, who is
denied admission into the program or terminated from the program, presents
a threat to the public or his or her own health and safety, the program
manager shall report the name and license number, along with a copy of all
diversion records for that registered nurse, to the board’s enforcement
program. The board may use any of the records it receives under this
subdivision in any disciplinary proceeding.

SEC. 21. Section 2770.12 of the Business and Professions Code is
amended to read:
2770.12. (a) After the committee and the program manager in their
discretion have determined that a registered nurse has successfully completed
the diversion program, all records pertaining to the registered nurse’s
participation in the diversion program shall be purged.

(b) All board and committee records and records of a proceeding
pertaining to the participation of a registered nurse in the diversion program
shall be kept confidential and are not subject to discovery or subpoena,
extcept as specified in subdivision (b) of Section 2770.11 and subdivision
(c).

(c) A registered nurse shall be deemed to have waived any rights granted
by any laws and regulations relating to confidentiality of the diversion
program, if he or she does any of the following:

(1) Presents information relating to any aspect of the diversion program
during any stage of the disciplinary process subsequent to the filing of an
accusation, statement of issues, or petition to compel an examination
pursuant to Article 12.5 (commencing with Section 820) of Chapter 1. The
waiver shall be limited to information necessary to verify or refute any
information disclosed by the registered nurse.

(2) Files a lawsuit against the board relating to any aspect of the diversion
program.

(3) Claims in defense to a disciplinary action, based on a complaint that
led to the registered nurse’s participation in the diversion program, that he
or she was prejudiced by the length of time that passed between the alleged
violation and the filing of the accusation. The waiver shall be limited to
information necessary to document the length of time the registered nurse
participated in the diversion program.

SEC. 22. Section 3501 of the Business and Professions Code is amended
to read:

3501. As used in this chapter:

(a) “Board” means the Medical Board of California.

(b) “Approved program” means a program for the education of physician
assistants that has been formally approved by the committee.

(c) “Trainee” means a person who is currently enrolled in an approved
program.

(d) “Physician assistant” means a person who meets the requirements
of this chapter and is licensed by the committee.

(e) “Supervising physician” means a physician and surgeon licensed by
the board or by the Osteopathic Medical Board of California who supervises
one or more physician assistants, who possesses a current valid license to
practice medicine, and who is not currently on disciplinary probation for
improper use of a physician assistant.

(f) “Supervision” means that a licensed physician and surgeon oversees
the activities of, and accepts responsibility for, the medical services rendered
by a physician assistant.

(g) “Committee” or “examining committee” means the Physician
Assistant Committee.
(h) “Regulations” means the rules and regulations as contained in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(i) “Routine visual screening” means uninvasive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.

(j) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 23. Section 3534.1 of the Business and Professions Code is amended to read:

3534.1. The examining committee shall establish and administer a diversion program for the rehabilitation of physician assistants whose competency is impaired due to the abuse of drugs or alcohol. The examining committee may contract with any other state agency or a private organization to perform its duties under this article. The examining committee may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. As used in this article, “committee” means a diversion evaluation committee. A committee created under this article operates under the direction of the diversion program manager, as designated by the executive officer of the examining committee. The program manager has the primary responsibility to review and evaluate recommendations of the committee.

SEC. 23. Section 3534.3 of the Business and Professions Code is amended to read:

3534.3. Each committee has the following duties and responsibilities:

(a) To evaluate physician assistants who request participation in the program and to make recommendations to the program manager. In making recommendations, a committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) To review and designate treatment facilities to which physician assistants in the diversion program may be referred, and to make recommendations to the program manager.

(c) The receipt and review of information concerning physician assistants participating in the program.

(d) To call meetings as necessary to consider the requests of physician assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the examining committee.

(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of medicine.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physician assistant participating in the program, including treatment, supervision, and monitoring requirements.
(g) To hold a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program’s progress, to prepare reports to be submitted to the examining committee, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a committee shall be considered a public employee. No examining committee or committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 24. Section 3534.4 of the Business and Professions Code is amended to read:

3534.4. Criteria for acceptance into the diversion program shall include all of the following: (a) the applicant shall be licensed as a physician assistant by the examining committee and shall be a resident of California; (b) the applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice medicine safely or competently; (c) the applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action; (d) the applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program; (e) the applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program; and (f) the applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

An applicant may be denied participation in the program if the examining committee, the program manager, or a committee determines that the applicant will not substantially benefit from participation in the program or that the applicant’s participation in the program creates too great a risk to the public health, safety, or welfare.

SEC. 25. Section 3534.9 of the Business and Professions Code is amended to read:

3534.9. If the examining committee contracts with any other entity to carry out this section, the executive officer of the examining committee or the program manager shall review the activities and performance of the contractor on a biennial basis. As part of this review, the examining committee shall review files of participants in the program. However, the names of participants who entered the program voluntarily shall remain confidential, except when the review reveals misdiagnosis, case mismanagement, or noncompliance by the participant.

SEC. 26. Section 4371 of the Business and Professions Code is amended to read:

4371. (a) The executive officer of the board shall designate a program manager of the pharmacists recovery program. The program manager shall have background experience in dealing with substance abuse issues.
(b) The program manager shall review the pharmacists recovery program on a quarterly basis. As part of this evaluation, the program manager shall review files of all participants in the pharmacists recovery program.

(c) The program manager shall work with the contractor administering the pharmacists recovery program to evaluate participants in the program according to established guidelines and to develop treatment contracts and evaluate participant progress in the program.

SEC. 27. The responsibilities imposed on a licensing board by this act shall be considered a current operating expense of that board, and shall be paid from the fund generally designated to provide operating expenses for that board, subject to the appropriation provisions applicable to that fund.
Senate Bill No. 1172

CHAPTER 517

An act to amend Section 156.1 of, and to add Sections 315.2 and 315.4 to, the Business and Professions Code, relating to regulatory boards.

[Approved by Governor September 29, 2010. Filed with Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL’S DIGEST

SB 1172, Negrete McLeod. Regulatory boards: diversion programs.

(1) Existing law provides for the regulation of specified professions and vocations by various boards, as defined, within the Department of Consumer Affairs. Under existing law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs are required to retain all records and documents pertaining to those services for 3 years or until they are audited, whichever occurs first. Under existing law, those records and documents are required to be kept confidential and are not subject to discovery or subpoena.

This bill would specify that those records and documents shall be kept for 3 years and kept confidential and are not subject to discovery or subpoena unless otherwise expressly provided by law.

(2) Existing law provides for the licensure and regulation of various healing arts by boards within the Department of Consumer Affairs. Under existing law, these boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against their licensees.

Existing law establishes diversion and recovery programs to identify and rehabilitate dentists, osteopathic physicians and surgeons, physical therapists, physical therapy assistants, registered nurses, physician assistants, pharmacists and intern pharmacists, veterinarians, and registered veterinary technicians whose competency may be impaired due to, among other things, alcohol and drug abuse.

The bill would require a healing arts board to order a licensee to cease practice if the licensee tests positive for any prohibited substance under the terms of the licensee’s probation or diversion program. The bill would also authorize a board to adopt regulations authorizing it to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation, as specified. The bill would provide that these provisions do not affect the Board of Registered Nursing.
The people of the State of California do enact as follows:

SECTION 1. Section 156.1 of the Business and Professions Code is amended to read:

156.1. (a) Notwithstanding any other provision of law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs shall retain all records and documents pertaining to those services until such time as these records and documents have been reviewed for audit by the department. These records and documents shall be retained for three years from the date of the last treatment or service rendered to that licentiate, after which time the records and documents may be purged and destroyed by the contract vendor. This provision shall supersede any other provision of law relating to the purging or destruction of records pertaining to those treatment and rehabilitation programs.

(b) Unless otherwise expressly provided by statute or regulation, all records and documents pertaining to services for the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs provided by any contract vendor to the department or to any board within the department shall be kept confidential and are not subject to discovery or subpoena.

(c) With respect to all other contracts for services with the department or any board within the department other than those set forth in subdivision (a), the director or chief deputy director may request an examination and audit by the department’s internal auditor of all performance under the contract. For this purpose, all documents and records of the contract vendor in connection with such performance shall be retained by such vendor for a period of three years after final payment under the contract. Nothing in this section shall affect the authority of the State Auditor to conduct any examination or audit under the terms of Section 8546.7 of the Government Code.

SEC. 2. Section 315.2 is added to the Business and Professions Code, to read:

315.2. (a) A board, as described in Section 315, shall order a licensee of the board to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee’s probation or diversion program.

(b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A cease practice order under this section shall not constitute disciplinary action.

(d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.
SEC. 3. Section 315.4 is added to the Business and Professions Code, to read:

315.4. (a) A board, as described in Section 315, may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315.

(b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A cease practice order under this section shall not constitute disciplinary action.

(d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.
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To: Board Members  
From: Kim Madsen  
Telephone: 916-574-7841  
Date: May 2, 2012  
Subject: Department of Managed Health Care Task Force

Background

Senate Bill 946 (Steinberg, Chapter 650, Statutes of 2011) required the Department of Managed Health Care (Department) in conjunction with the Department of Insurance, to convene an Autism Advisory Task Force by February 1, 2012. The purpose of the task force is to provide assistance to the Department on topics related to behavioral health treatment and to develop recommendations relating to the education, training, and experience requirements to secure licensure from the State of California. The task force must submit a report to the Governor and specified members of the Legislature by December 31, 2012.

The bill directs the task force to address the following:

- Interventions that have been scientifically validated and have demonstrated clinical efficacy
- Interventions that have measurable treatment outcomes
- Patient selection, monitoring and duration of the therapy
- Qualifications, training and supervision of providers
- Adequate network of providers
- Recommendations regarding the education, training and experience requirements those unlicensed individuals providing autism services shall meet in order to secure a license from the state.

Current Status of the Task Force

The task force is comprised of 18 members and is a diverse group of researchers, providers, advocates and experts charged with developing recommendations for state policy makers on behavioral health treatment for people with autism. A total of eight meetings are scheduled to complete the work of the task force. The first meeting was on February 23, 2012. These meetings are open to the public. Information, including agendas, meeting schedules and informational materials are available on the Department’s website http://www.dmhc.ca.gov/dmhc_consumer/br/br_autismtf.aspx. To date the task force has had four public meetings. Thus far the task force discussions have focused on the developing an overall scope of work, defining parameters, criteria, and processes for assuring effective treatment, and the roles and qualifications of the various providers. Beginning in July the task force will discuss
the requirements that unlicensed individuals providing autism services shall meet for licensure in California.

**BBS Participation**

One area the task force will address is the recommendations regarding the education, training, and experience individuals should meet in order to become licensed in California. Several bills in the past have attempted to license practitioners providing this type of treatment. The bills have proposed the Board as the regulatory agency to provide oversight.

It is not the role of the task force to determine which agency will provide the regulatory oversight. However, considering previous efforts, Board staff is attending these meetings to monitor the discussions and provide public comment as appropriate.

**Attachments:**

Senate Bill 946
Task Force Meeting Schedule
An act to amend Section 121022 of, to add Section 1374.74 to, and to add and repeal Section 1374.73 of, the Health and Safety Code, to add and repeal Sections 10144.51 and 10144.52 of the Insurance Code, and to amend Sections 5705, 5708, 5710, 5716, 5724, and 5750.1 of the Welfare and Institutions Code, relating to health.

[Approved by Governor October 9, 2011. Filed with Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL’S DIGEST

SB 946, Steinberg. Health care coverage: mental illness: pervasive developmental disorder or autism: public health.

Existing law provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. A willful violation of these provisions is a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law requires health care service plan contracts and health insurance policies to provide benefits for specified conditions, including certain mental health conditions.

This bill, effective July 1, 2012, would require those health care service plan contracts and health insurance policies, except as specified, to provide coverage for behavioral health treatment, as defined, for pervasive developmental disorder or autism. The bill would provide, however, that no benefits are required to be provided that exceed the essential health benefits that will be required under specified federal law. Because a violation of these provisions with respect to health care service plans would be a crime, the bill would impose a state-mandated local program.

These provisions would be inoperative July 1, 2014, and repealed on January 1, 2015.

The bill would require the Department of Managed Health Care, in conjunction with the Department of Insurance, to convene an Autism Advisory Task Force by February 1, 2012, to provide assistance to the department on topics related to behavioral health treatment and to develop recommendations relating to the education, training, and experience requirements to secure licensure from the state. The bill would require the department to submit a report of the Task Force to the Governor and specified members of the Legislature by December 31, 2012.

Existing law establishes various communicable disease prevention and control programs. Existing law requires the State Department of Public Health to establish a list of reportable diseases and conditions and requires health care providers and laboratories to report cases of HIV infection to the local health officer using patient names and sets guidelines regarding

93
these reports. Existing law requires the local health officers to report unduplicated HIV cases by name to the department.

This bill would authorize the department to revise the HIV reporting form without the adoption of a regulation, as specified.

Under the Bronzan-McCorquodale Act, the State Department of Mental Health administers the provision of funds to counties for community mental health services programs. Existing law also permits counties to receive, under certain circumstances, Medi-Cal reimbursement for mental health services. Under existing law, negotiated net amounts or rates are used as the cost of services in contracts between the state and the county and between the county and a subprovider of services. Existing law establishes the method for computing negotiated rates. Existing law prohibits the charges for the care and treatment of each patient receiving service from a county mental health program from exceeding the actual or negotiated cost of the services.

This bill would only allow the use of negotiated net amounts as the cost of services in a contract between the state and a county and the county and a subprovider of services, and would eliminate the use of negotiated rates. The bill would also specify that the charges for the care and treatment of each patient receiving a service from a county mental health program shall not exceed the actual cost of the service.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which basic health care services are provided to qualified low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid provisions. Under existing law, the State Department of Health Care Services promulgates regulations for determining reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program. Existing law requires the State Department of Mental Health and the State Department of Health Care Services to jointly develop a ratesetting methodology for use in the Short-Doyle Medi-Cal system that maximizes federal funding and utilizes, as much as practicable, federal Medicare reimbursement principles. Existing law requires that this ratesetting methodology contain incentives relating to economy and efficiency.

The bill would delete the requirement that the ratesetting methodology in the Short-Doyle Medi-Cal system include incentives relating to economy and efficiency.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1374.73 is added to the Health and Safety Code, to read:
1374.73. (a) (1) Every health care service plan contract that provides hospital, medical, or surgical coverage shall also provide coverage for behavioral health treatment for pervasive developmental disorder or autism no later than July 1, 2012. The coverage shall be provided in the same manner and shall be subject to the same requirements as provided in Section 1374.72.

(2) Notwithstanding paragraph (1), as of the date that proposed final rulemaking for essential health benefits is issued, this section does not require any benefits to be provided that exceed the essential health benefits that all health plans will be required by federal regulations to provide under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).

(3) This section shall not affect services for which an individual is eligible pursuant to Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code.

(4) This section shall not affect or reduce any obligation to provide services under an individualized education program, as defined in Section 56032 of the Education Code, or an individualized service plan, as described in Section 5600.4 of the Welfare and Institutions Code, or under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400, et seq.) and its implementing regulations.

(b) Every health care service plan subject to this section shall maintain an adequate network that includes qualified autism service providers who supervise and employ qualified autism service professionals or paraprofessionals who provide and administer behavioral health treatment. Nothing shall prevent a health care service plan from selectively contracting with providers within these requirements.

(c) For the purposes of this section, the following definitions shall apply:

(1) “Behavioral health treatment” means professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs, that develop or restore, to the maximum extent practicable, the functioning of an individual with pervasive developmental disorder or autism and that meet all of the following criteria:

(A) The treatment is prescribed by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of, or is developed by a psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of, Division 2 of the Business and Professions Code.

(B) The treatment is provided under a treatment plan prescribed by a qualified autism service provider and is administered by one of the following:

(i) A qualified autism service provider.

(ii) A qualified autism service professional supervised and employed by the qualified autism service provider.

(iii) A qualified autism service paraprofessional supervised and employed by a qualified autism service provider.
(C) The treatment plan has measurable goals over a specific timeline that is developed and approved by the qualified autism service provider for the specific patient being treated. The treatment plan shall be reviewed no less than once every six months by the qualified autism service provider and modified whenever appropriate, and shall be consistent with Section 4686.2 of the Welfare and Institutions Code pursuant to which the qualified autism service provider does all of the following:

(i) Describes the patient’s behavioral health impairments to be treated.

(ii) Designs an intervention plan that includes the service type, number of hours, and parent participation needed to achieve the plan’s goal and objectives, and the frequency at which the patient’s progress is evaluated and reported.

(iii) Provides intervention plans that utilize evidence-based practices, with demonstrated clinical efficacy in treating pervasive developmental disorder or autism.

(iv) Discontinues intensive behavioral intervention services when the treatment goals and objectives are achieved or no longer appropriate.

(D) The treatment plan is not used for purposes of providing or for the reimbursement of respite, day care, or educational services and is not used to reimburse a parent for participating in the treatment program. The treatment plan shall be made available to the health care service plan upon request.

(2) “Pervasive developmental disorder or autism” shall have the same meaning and interpretation as used in Section 1374.72.

(3) “Qualified autism service provider” means either of the following:

(A) A person, entity, or group that is certified by a national entity, such as the Behavior Analyst Certification Board, that is accredited by the National Commission for Certifying Agencies, and who designs, supervises, or provides treatment for pervasive developmental disorder or autism, provided the services are within the experience and competence of the person, entity, or group that is nationally certified.

(B) A person licensed as a physician and surgeon, physical therapist, occupational therapist, psychologist, marriage and family therapist, educational psychologist, clinical social worker, professional clinical counselor, speech-language pathologist, or audiologist pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, who designs, supervises, or provides treatment for pervasive developmental disorder or autism, provided the services are within the experience and competence of the licensee.

(4) “Qualified autism service professional” means an individual who meets all of the following criteria:

(A) Provides behavioral health treatment.

(B) Is employed and supervised by a qualified autism service provider.

(C) Provides treatment pursuant to a treatment plan developed and approved by the qualified autism service provider.

(D) Is a behavioral service provider approved as a vendor by a California regional center to provide services as an Associate Behavior Analyst,
Behavior Analyst, Behavior Management Assistant, Behavior Management Consultant, or Behavior Management Program as defined in Section 54342 of Title 17 of the California Code of Regulations.

(E) Has training and experience in providing services for pervasive developmental disorder or autism pursuant to Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code.

(5) “Qualified autism service paraprofessional” means an unlicensed and uncertified individual who meets all of the following criteria:

(A) Is employed and supervised by a qualified autism service provider.

(B) Provides treatment and implements services pursuant to a treatment plan developed and approved by the qualified autism service provider.

(C) Meets the criteria set forth in the regulations adopted pursuant to Section 4686.3 of the Welfare and Institutions Code.

(D) Has adequate education, training, and experience, as certified by a qualified autism service provider.

(d) This section shall not apply to the following:

(1) A specialized health care service plan that does not deliver mental health or behavioral health services to enrollees.

(2) A health care service plan contract in the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).

(3) A health care service plan contract in the Healthy Families Program (Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code).

(4) A health care benefit plan or contract entered into with the Board of Administration of the Public Employees’ Retirement System pursuant to the Public Employees’ Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code).

(e) Nothing in this section shall be construed to limit the obligation to provide services under Section 1374.72.

(f) As provided in Section 1374.72 and in paragraph (1) of subdivision (a), in the provision of benefits required by this section, a health care service plan may utilize case management, network providers, utilization review techniques, prior authorization, copayments, or other cost sharing.

(g) This section shall become inoperative on July 1, 2014, and, as of January 1, 2015, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2015, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 1374.74 is added to the Health and Safety Code, to read:

1374.74. (a) The department, in consultation with the Department of Insurance, shall convene an Autism Advisory Task Force by February 1, 2012, in collaboration with other agencies, departments, advocates, autism experts, health plan and health insurer representatives, and other entities and stakeholders that it deems appropriate. The Autism Advisory Task Force shall develop recommendations regarding behavioral health treatment that is medically necessary for the treatment of individuals with autism or
The Autism Advisory Task Force shall address the following:

1. Interventions that have been scientifically validated and have demonstrated clinical efficacy.
2. Interventions that have measurable treatment outcomes.
3. Patient selection, monitoring, and duration of therapy.
4. Qualifications, training, and supervision of providers.
5. Adequate networks of providers.

(b) The Autism Advisory Task Force shall also develop recommendations regarding the education, training, and experience requirements that unlicensed individuals providing autism services shall meet in order to secure a license from the state.

(c) The department shall submit a report of the Autism Advisory Task Force to the Governor, the President pro Tempore of the Senate, the Speaker of the Assembly, and the Senate and Assembly Committees on Health by December 31, 2012, on which date the task force shall cease to exist.

SEC. 3. Section 121022 of the Health and Safety Code is amended to read:

121022. (a) To ensure knowledge of current trends in the HIV epidemic and to ensure that California remains competitive for federal HIV and AIDS funding, health care providers and laboratories shall report cases of HIV infection to the local health officer using patient names on a form developed by the department. Local health officers shall report unduplicated HIV cases by name to the department on a form developed by the department.

(b) (1) Health care providers and local health officers shall submit cases of HIV infection pursuant to subdivision (a) by courier service, United States Postal Service express mail or registered mail, other traceable mail, person-to-person transfer, facsimile, or electronically by a secure and confidential electronic reporting system established by the department.

(2) This subdivision shall be implemented using the existing resources of the department.

(c) The department and local health officers shall ensure continued reasonable access to anonymous HIV testing through alternative testing sites, as established by Section 120890, and in consultation with HIV planning groups and affected stakeholders, including representatives of persons living with HIV and health officers.

(d) The department shall promulgate emergency regulations to conform the relevant provisions of Article 3.5 (commencing with Section 2641.5) of Chapter 4 of Division 1 of Title 17 of the California Code of Regulations, consistent with this chapter, by April 17, 2007. Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), if the department revises the form used for reporting pursuant to subdivision (a) after consideration of the reporting guidelines published by the federal Centers for Disease Control and Prevention, the revised form shall be implemented without being adopted as a regulation, and shall be filed with
the Secretary of State and printed in Title 17 of the California Code of Regulations.

(e) Pursuant to Section 121025, reported cases of HIV infection shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(f) State and local health department employees and contractors shall be required to sign confidentiality agreements developed by the department that include information related to the penalties for a breach of confidentiality and the procedures for reporting a breach of confidentiality, prior to accessing confidential HIV-related public health records. Those agreements shall be reviewed annually by either the department or the appropriate local health department.

(g) No person shall disclose identifying information reported pursuant to subdivision (a) to the federal government, including, but not limited to, any agency, employee, agent, contractor, or anyone else acting on behalf of the federal government, except as permitted under subdivision (b) of Section 121025.

(h) (1) Any potential or actual breach of confidentiality of HIV-related public health records shall be investigated by the local health officer, in coordination with the department, when appropriate. The local health officer shall immediately report any evidence of an actual breach of confidentiality of HIV-related public health records at a city or county level to the department and the appropriate law enforcement agency.

(2) The department shall investigate any potential or actual breach of confidentiality of HIV-related public health records at the state level, and shall report any evidence of such a breach of confidentiality to an appropriate law enforcement agency.

(i) Any willful, negligent, or malicious disclosure of cases of HIV infection reported pursuant to subdivision (a) shall be subject to the penalties prescribed in Section 121025.

(j) Nothing in this section shall be construed to limit other remedies and protections available under state or federal law.

SEC. 4. Section 10144.51 is added to the Insurance Code, to read:

10144.51. (a) (1) Every health insurance policy shall also provide coverage for behavioral health treatment for pervasive developmental disorder or autism no later than July 1, 2012. The coverage shall be provided in the same manner and shall be subject to the same requirements as provided in Section 10144.5.

(2) Notwithstanding paragraph (1), as of the date that proposed final rulemaking for essential health benefits is issued, this section does not require any benefits to be provided that exceed the essential health benefits that all health insurers will be required by federal regulations to provide under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).

(3) This section shall not affect services for which an individual is eligible pursuant to Division 4.5 (commencing with Section 4500) of the Welfare
and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code.

(4) This section shall not affect or reduce any obligation to provide services under an individualized education program, as defined in Section 56032 of the Education Code, or an individualized service plan, as described in Section 5600.4 of the Welfare and Institutions Code, or under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400, et seq.) and its implementing regulations.

(b) Pursuant to Article 6 (commencing with Section 2240.1) of Title 10 of the California Code of Regulations, every health insurer subject to this section shall maintain an adequate network that includes qualified autism service providers who supervise and employ qualified autism service professionals or paraprofessionals who provide and administer behavioral health treatment. Nothing shall prevent a health insurer from selectively contracting with providers within these requirements.

(c) For the purposes of this section, the following definitions shall apply:

(1) “Behavioral health treatment” means professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs, that develop or restore, to the maximum extent practicable, the functioning of an individual with pervasive developmental disorder or autism, and that meet all of the following criteria:

(A) The treatment is prescribed by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of, or is developed by a psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of, Division 2 of the Business and Professions Code.

(B) The treatment is provided under a treatment plan prescribed by a qualified autism service provider and is administered by one of the following:

(i) A qualified autism service provider.

(ii) A qualified autism service professional supervised and employed by the qualified autism service provider.

(iii) A qualified autism service paraprofessional supervised and employed by a qualified autism service provider.

(C) The treatment plan has measurable goals over a specific timeline that is developed and approved by the qualified autism service provider for the specific patient being treated. The treatment plan shall be reviewed no less than once every six months by the qualified autism service provider and modified whenever appropriate, and shall be consistent with Section 4686.2 of the Welfare and Institutions Code pursuant to which the qualified autism service provider does all of the following:

(i) Describes the patient’s behavioral health impairments to be treated.

(ii) Designs an intervention plan that includes the service type, number of hours, and parent participation needed to achieve the plan’s goal and objectives, and the frequency at which the patient’s progress is evaluated and reported.

(iii) Provides intervention plans that utilize evidence-based practices, with demonstrated clinical efficacy in treating pervasive developmental disorder or autism.
(iv) Discontinues intensive behavioral intervention services when the treatment goals and objectives are achieved or no longer appropriate.

(D) The treatment plan is not used for purposes of providing or for the reimbursement of respite, day care, or educational services and is not used to reimburse a parent for participating in the treatment program. The treatment plan shall be made available to the insurer upon request.

(2) “Pervasive developmental disorder or autism” shall have the same meaning and interpretation as used in Section 10144.5.

(3) “Qualified autism service provider” means either of the following:

(A) A person, entity, or group that is certified by a national entity, such as the Behavior Analyst Certification Board, that is accredited by the National Commission for Certifying Agencies, and who designs, supervises, or provides treatment for pervasive developmental disorder or autism, provided the services are within the experience and competence of the person, entity, or group that is nationally certified.

(B) A person licensed as a physician and surgeon, physical therapist, occupational therapist, psychologist, marriage and family therapist, educational psychologist, clinical social worker, professional clinical counselor, speech-language pathologist, or audiologist pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, who designs, supervises, or provides treatment for pervasive developmental disorder or autism, provided the services are within the experience and competence of the licensee.

(4) “Qualified autism service professional” means an individual who meets all of the following criteria:

(A) Provides behavioral health treatment.

(B) Is employed and supervised by a qualified autism service provider.

(C) Provides treatment pursuant to a treatment plan developed and approved by the qualified autism service provider.

(D) Is a behavioral service provider approved as a vendor by a California regional center to provide services as an Associate Behavior Analyst, Behavior Analyst, Behavior Management Assistant, Behavior Management Consultant, or Behavior Management Program as defined in Section 54342 of Title 17 of the California Code of Regulations.

(E) Has training and experience in providing services for pervasive developmental disorder or autism pursuant to Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code.

(5) “Qualified autism service paraprofessional” means an unlicensed and uncertified individual who meets all of the following criteria:

(A) Is employed and supervised by a qualified autism service provider.

(B) Provides treatment and implements services pursuant to a treatment plan developed and approved by the qualified autism service provider.

(C) Meets the criteria set forth in the regulations adopted pursuant to Section 4686.3 of the Welfare and Institutions Code.

(D) Has adequate education, training, and experience, as certified by a qualified autism service provider.
(d) This section shall not apply to the following:

1. A specialized health insurance policy that does not cover mental health or behavioral health services or an accident only, specified disease, hospital indemnity, or Medicare supplement policy.

2. A health insurance policy in the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).

3. A health insurance policy in the Healthy Families Program (Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code).

4. A health care benefit plan or policy entered into with the Board of Administration of the Public Employees’ Retirement System pursuant to the Public Employees’ Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code).

(e) Nothing in this section shall be construed to limit the obligation to provide services under Section 10144.5.

(f) As provided in Section 10144.5 and in paragraph (1) of subdivision (a), in the provision of benefits required by this section, a health insurer may utilize case management, network providers, utilization review techniques, prior authorization, copayments, or other cost sharing.

(g) This section shall become inoperative on July 1, 2014, and, as of January 1, 2015, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2015, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 10144.52 is added to the Insurance Code, to read:

10144.52. (a) For purposes of this part, the terms “provider,” “professional provider,” “network provider,” “mental health provider,” and “mental health professional” shall include the term “qualified autism service provider,” as defined in subdivision (c) of Section 10144.51.

(b) This section shall become inoperative on July 1, 2014, and, as of January 1, 2015, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2015, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 5705 of the Welfare and Institutions Code is amended to read:

5705. (a) It is the intent of the Legislature that the use of negotiated net amounts, as provided in this section, be given preference in contracts for services under this division.

(b) Negotiated net amounts may be used as the cost of services in contracts between the state and the county or contracts between the county and a subprovider of services, or both. A negotiated net amount shall be determined by calculating the total budget for services for a program or a component of a program, less the amount of projected revenue. All participating government funding sources, except for the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9), shall be bound to that amount as the cost of providing all or part of the total county mental health program as described in the county performance contract for each fiscal year, to the extent that the governmental funding source
participates in funding the county mental health programs. Where the State Department of Health Care Services promulgates regulations for determining reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program, those regulations shall be controlling as to the rates for reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program and rendered to Medi-Cal beneficiaries. Providers under this subdivision shall report to the State Department of Mental Health and local mental health programs any information required by the State Department of Mental Health in accordance with procedures established by the Director of Mental Health.

(c) Notwithstanding any other provision of this division or Division 9 (commencing with Section 10000), absent a finding of fraud, abuse, or failure to achieve contract objectives, no restrictions, other than any contained in the contract, shall be placed upon a provider’s expenditure pursuant to this section.

SEC. 7. Section 5708 of the Welfare and Institutions Code is amended to read:

5708. To maintain stability during the transition, counties that contracted with the department during the 1990–91 fiscal year on a negotiated net amount basis may continue to use the same funding mechanism.

SEC. 8. Section 5710 of the Welfare and Institutions Code is amended to read:

5710. (a) Charges for the care and treatment of each patient receiving service from a county mental health program shall not exceed the actual cost thereof as determined or approved by the Director of Mental Health in accordance with standard accounting practices. The director may include the amount of expenditures for capital outlay or the interest thereon, or both, in his or her determination of actual cost. The responsibility of a patient, his or her estate, or his or her responsible relatives to pay the charges and the powers of the director with respect thereto shall be determined in accordance with Article 4 (commencing with Section 7275) of Chapter 3 of Division 7.

(b) The Director of Mental Health may delegate to each county all or part of the responsibility for determining the financial liability of patients to whom services are rendered by a county mental health program and all or part of the responsibility for determining the ability of the responsible parties to pay for services to minor children who are referred by a county for treatment in a state hospital. Liability shall extend to the estates of patients and to responsible relatives, including the spouse of an adult patient and the parents of minor children. The Director of Mental Health may also delegate all or part of the responsibility for collecting the charges for patient fees. Counties may decline this responsibility as it pertains to state hospitals, at their discretion. If this responsibility is delegated by the director, the director shall establish and maintain the policies and procedures for making the determinations and collections. Each county to which the responsibility is delegated shall comply with the policy and procedures.
(c) The director shall prepare and adopt a uniform sliding scale patient fee schedule to be used in all mental health agencies for services rendered to each patient. In preparing the uniform patient fee schedule, the director shall take into account the existing charges for state hospital services and those for community mental health program services. If the director determines that it is not practicable to devise a single uniform patient fee schedule applicable to both state hospital services and services of other mental health agencies, the director may adopt a separate fee schedule for the state hospital services which differs from the uniform patient fee schedule applicable to other mental health agencies.

SEC. 9. Section 5716 of the Welfare and Institutions Code is amended to read:

5716. Counties may contract with providers on a negotiated net amount basis in the same manner as set forth in Section 5705.

SEC. 10. Section 5724 of the Welfare and Institutions Code is amended to read:

5724. (a) The department and the State Department of Health Care Services shall jointly develop a new ratesetting methodology for use in the Short-Doyle Medi-Cal system that maximizes federal funding and utilizes, as much as practicable, federal medicare reimbursement principles. The departments shall work with the counties and the federal Health Care Financing Administration in the development of the methodology required by this section.

(b) Rates developed through the methodology required by this section shall apply only to reimbursement for direct client services.

(c) Administrative costs shall be claimed separately and shall be limited to 15 percent of the total cost of direct client services.

(d) The cost of performing utilization reviews shall be claimed separately and shall not be included in administrative cost.

(e) The rates established for direct client services pursuant to this section shall be based on increments of time for all noninpatient services.

(f) The ratesetting methodology shall not be implemented until it has received any necessary federal approvals.

SEC. 11. Section 5750.1 of the Welfare and Institutions Code is amended to read:

5750.1. Notwithstanding Section 5750, a standard, rule, or policy, not directly the result of a statutory or administrative law change, adopted by the department or county during the term of an existing county performance contract shall not apply to the negotiated net amount terms of that contract under Sections 5705 and 5716, but shall only apply to contracts established after adoption of the standard, rule, or policy.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime.
within the meaning of Section 6 of Article XIII B of the California Constitution.
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Process Flow (revised)

Series 1.

- Develop overall scope of work.
- Develop framework for addressing the scope of work.

Wednesday, February 1, 2012

Task Force

Thursday, February 23, 2012

Work Group Meetings

Task Force

Work Group Meetings

Thursday, March 15, 2012

Task Force

Series 2.

- Define parameters, criteria, and processes for assuring effective treatment.
- Define roles and qualifications of various actors.

Friday, April 20, 2012

Task Force

Friday, May 18, 2012

Work Group Meetings

Task Force

Work Group Meetings

Friday, June 22, 2012

Task Force

Series 3.

- Define adequate networks of providers.
- Define requirements that unlicensed individuals providing autism services shall meet in order to secure a license from the state.

Friday, July 13, 2012

Task Force

Friday, July 27, 2012

Work Group Meetings

Task Force

Work Group Meetings

Friday, August 24, 2012

Task Force
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To: Board Members  Date: April 26, 2012

From: Kim Madsen  Telephone: (916) 574-7841
Executive Officer

Subject: Election of Officers

Section 4990 of the Business and Professions Code requires the Board to elect a Chair and Vice-Chair prior to June 1 of each year. Currently, Christine Wietlisbach is the Board Chair, and Patricia Lock-Dawson is the Vice-Chair. Accordingly, the Board should elect both a chair and a vice-chair at this meeting for 2012/2013.

Below is a list of board members and the date on which their term will expire.

<table>
<thead>
<tr>
<th>Board Member</th>
<th>Type</th>
<th>Authority</th>
<th>Date Appointed</th>
<th>Reappointed</th>
<th>Term Expires</th>
<th>Grace Expires</th>
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<td>Dr. Judy Johnson*</td>
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<td>Governor</td>
<td>8/24/2005</td>
<td>7/15/2008</td>
<td>6/1/2012</td>
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*Serving 2nd term; not eligible for reappointment